INDEX

Complaint

It having been charged by the Oil Workers International Union CIO, (herein called the Union) that Lion Oil Company (herein called Respondent) has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, (herein called the act), the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), has caused the Regional Director for the Fifteenth Region, as agent for the Board, designated by the Board's Rules and Regulations, Series 6, Section 102.15, to issue this Complaint and allege as follows:

I.

Respondent, Lion Oil Company, is and has been for many years a corporation duly organized under and existing by virtue of the laws of the State of Louisiana.

II.

At all times mentioned herein Respondent has maintained its principal office and place of business in El Dorado, Arkansas where it is engaged in the refining and distribution of petroleum and petroleum products and in the manufacture and sale of chemicals. In connection with these operations the Respondent maintains its Chemical Plant near the city of El Dorado.

III.

During the calendar year of 1951 Respondent received raw materials from without the State of Arkansas valued in excess of $1,000,000.00. During a similar period Respondent sold, shipped and delivered finished products to states other than the State of Arkansas valued in excess of $1,000,000.00.

IV.

The Union is a labor organization within the meaning of Section 2 (5) of the Act.

V.

In order to insure the employees the full benefits of their rights to self-organization and to collective bargaining and to otherwise effectuate the policies of the Act, all employees of Respondent at its Chemical Plant including all production, chemical and operating employees and all janitors, porters, maids, and other common laborers excluding all maintenance employees not mentioned in the inclusions, guards, firemen, office and clerical employees, non-working foremen, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

VI.

Prior to June 21, 1952, and at all times thereafter to the present, a majority of the employees of Respondent in the unit described in paragraph V above designated and selected the Union as their representative for the purposes of collective bargaining with Respondent.

VII.

At all times since June 21, 1952, and for many years prior thereto, the Union has been the representative for the purpose of collective bargaining of a majority of the employees in the unit described in paragraph V above and has by virtue of Section 9 (a) of the Act, been the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and conditions of employment.

VIII.

Respondent recognizes the Union as the exclusive representative of its employees in the unit described in para-

graph V above but has, though requested to do so, since June 21, 1952, refused to bargain collectively with the Union as the duly authorized representative of its employees in the said unit.

IX.

On or about April 30, 1952, the employees of Respondent, including those listed in Appendix "A", within the unit described above in paragraph V, did concertedly cease work and go on strike.

X.

The striking employees, including those listed in Appendix "A", made unconditional offers to return to work on or about June 21, 1952, said offers remaining continuously in effect and repeated at various times thereafter.

XI.

Respondent on or about June 21, 1952, and on various dates thereafter, refused and continued to refuse until on or about August 4, 1952, to reinstate the striking employees, including those listed in Appendix "A" to their former or substantially equivalent positions of employment, but did lock out and deny admittance to the plant to said employees.

XII.

Respondent did refuse to reinstate and lock out its striking employees because of their membership and activities in the Union and because of other concerted activities for mutual aid and protection and in order to force and require the Union to enter into a contract on terms acceptable to Respondent.

XIII.

From July 16, 1952 until July 30, 1952 Respondent imposed as an additional condition to the reinstatement of the striking employees, including those listed on Appen-

dix "A", and the termination of the lock out, the withdrawal of the charge filed by the Union in this matter.

XIV:

By the aforementioned acts, and each of them, as set forth in paragraphs VIII, XI, XII and XIII in connection with the allegations contained in paragraphs V, VI and VII, Respondent has refused to bargain collectively with the representative of its employees and thereby engaged in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

XV.

By the acts described in paragraphs XI and XII, and each of them, in connection with the allegations contained in paragraphs IX and X, Respondent did discriminate in regard to the hire and tenure of the striking employees, including those listed on Appendix "A" in order to discourage concerted activity on the part of employees for collective bargaining and other mutual aid and protection, and thereby did engage in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

XVI.

By the aforementioned acts, and each of them, as set forth in paragraphs XI and XIII in connection with the allegations of paragraphs IX and X, Respondent has discriminated in regard to the hire and tenure of employment of the striking employees, including those listed on Appendix "A", because they through the Union filed charges under the National Labor Relations Act, and thereby did engage in unfair labor practices within the meaning of Section 8 (a) (4) of the Act.

XVII.

By the aforementioned acts, and each of them, as set forth in paragraphs VIII, IX, XII and XIII, occurring in connection with the allegations contained in paragraphs V, VI, VII, IX and X, Respondent has interfered with, re-

APPENDIX A

Provell Aaron
Thomas Abdella
E. L. Adams
Dan D. Adock
B. M. Addington
J. O. Agerton
S. G. Akins
B. J. Alderson
Leavy Allen
A. H. Allison
D. B. Anderson
Jack C. Anderson
Paul C. Andrews
M. P. Arledge
W. B. Arminstead, Jr.
Simon Armstrong
De Witt Arrington
H. E. Atkins
E. L. Audirsch
Lewis T. Avery
Otis Avery
M. G. Aurbrey
Jessee J. Baggett
H. L. Bailes, Jr.
Joe J. Bailey
A. L. Baker
E. J. Baker
F. B. Baker
M. O. Barbaree
John P. Barker
R. W. Barnes, Jr.
Warren Barnes
A. A. Barrett
C. P. Barrett
G. G. Beasley
Oscar Berry
J. W. Bettis
Howard Blalock
Robert L. Blaylock
J. E. Bledsoe
C. S. Boardman
James H. Bolding
Ocie Boone
Geo. R. Booth
James E. Boswell
Burnett Bowens
Acie Bradford
James E. Brasher
Roy Braswell
W. P. Braswell
M. B. Brewer
K. C. Bridges
Earnest B. Briggs
Frank Briggs
W. L. Brooks
A. D. Brown
D. L. Brown
E. E. Brown
Gus M. Brown
J. W. Brown
Warner J. Brown
A. R. Buckalew, Jr.

Tommie L. Buckner
Elijah Buggs
R. E. Bugh
C. F. Burleson
Willie J. Burns
J. E. Buswell
F. H. Butler
J. E. Butler
J. D. Butterfield
R. H. Cabaniss
N. K. Calaway, Jr.
A. T. Calvert
Emon Cameron
Jack D. Cameron
J. D. Cameron
C. W. Campbell
J. M. Canley
J. C. Carr
H. C. Carroll
J. M. Carroll
P. C. Carroll
E. L. Case
A. C. Chaney
Willie R. Charles
W. O. Cheatham
Monroe Cheathom
Murphy Clawson
Eddie Cobb
Surnell Cobb
Willie A. Cobb
Jake Cole
H. S. Combs
J. W. Cook
J. O. Cook
Mack Cook
Maurice U. Cook
C. E. Copeland
H. J. Cottrell
Otis Cowser
E. L. Cox
E. R. Cranford
Sam H. Crawford
F. G. Crenshaw
John C. Crisp
M. C. Crittenden, Jr.
Paul Crumpler
J. C. Cullins
L. F. Cullins
R. E. Cunningham
Odis A. Cupp
H. G. Currie
J. L. Daniel
L. W. Daniels
C. C. Darden
B. J. Davis
Harvey Davis
Hudie Davis
J. H. Davis
R. W. Davis
R. L. Davis
Roy F. Davis
W. D. Davis
H. S. Davison
J. C. Davison
Royce M. Dean
J. H. Delk
T. H. DeLone
G. A. Dennis
C. V. Dollar
Judge E. Dorch

W. T. Doss
A. L. Douglas
R. L. Douglas
J. C. Dove
K. M. Dowdell
C. C. Downs
Doris L. Draper
Hazel Drummond
J. J. Drummond
T. L. Dumas
O. D. Duncan
Bernard Dunn
W. D. Dunn
Hilbert Dunwood
John Duren
C. S. Durham
W. E. Durrett
Leonard Dutton
John R. Dykes
G. E. Edwards
L. D. Edwards
Geo. F. Elerson
J. W. Ellen
J. T. Elliott
L. W. Elza, Jr.
H. G. Epps
D. C. Eudy
L. D. Evans
O. K. Evans
K. R. Everett
O. B. Ewing
B. T. Faison
G. K. Farrar
T. W. Farris
W. W. Fennell
Jerry Fifer
T. C. Fincher, Jr.
D. H. Fitzgerald
T. O. Flemiken
Halsey Forch
Gladys Ford
Henry Ford
Lonnie Ford
Mack Ford
Morris Ford
R. L. Ford, Jr.
J. L. Fortner
D. D. Franks
J. C. Frazier
Leonard Frazier
G. E. Freeman
T. V. Fulton
Jim Gafford
S. J. Garner
Price Garrison
J. S. Gatling
R. E. Gay
H. M. Gibbons
J. O. Giles
Marvin Givens
R. N. Givens
A. M. Glenn
G. R. Glover
T. H. Golleher
H. O. Goodwin
J. E. Goodwin
Oliver Goodwin
W. N. Goodwin
Leon Gordon
P. A. Goza

W. D. Grace
Troy Grafton
A. B. Graham
Floyd Graham
R. E. Grandon
C. E. Graves
Hazel J. Graves
W. W. Graves
J. F. Gray
J. M. Gray
H. M. Green
G. E. Greenlee
J. W. Griffin
M. J. Griffin
T. T. Griffin
A. O. Hale
J. C. Halsey
Weeda Norvelle Hamilton
Henry Hampton
James E. Hampton
W. G. Harry
George Hanson
Lee Roy Hanson
E. B. Harper
J. P. Harris
J. A. Harris
J. W. Harris
Nolen E. Harris
Percy D. Harris
R. D. Harrison
Hazel S. Haskins
D. S. Haworth
L. R. Hays
Charles Haynsworth
E. D. Helms
J. H. Henderson
P. W. Henderson
Wilson Henry
W. D. Hibberts
A. G. Hicks
E. T. Hilborn
Johnie Hill
Roy S. Hill
Aubrey S. Hoggard
Ed Hollins
Dodwell Holliman
B. T. Holmes
H. D. Holt
T. C. Holt
B. J. Honea
Willa M. Hooker
D. M. Howard
Willie Howard
Othal W. Huddleston
P. W. Hudson
J. W. Humphries
L. H. Hunter
James R. Ingram
W. H. Irwin
A. C. Jackson
A. E. Jackson
A. K. Jackson
Jack Jackson
R. M. Jackson
T. J. Jackson
Willie J. Jackson
Willie B. Jacobs
C. F. Jean
W. E. Jeffries
W. H. Jenkins

Francis U. Jett
C. W. Johnson
C. R. Johnson
H. L. Johnson
H. R. Johnson
James Johnson
James P. Johnson
Laura Johnson
Lewis T. Johnson
Obie S. Johnson
Phil J. Johnson
R. L. Johnson
Vassie Johnson
B. L. Jones
G. F. Jones
J. A. Jones, Jr.
Joe C. Jones
W. C. Jones
L. V. Keeling
Marvin Keith
H. C. Kellum
Cleveland Kennedy
Rex Lacewell
L. P. Lambert
J. A. Laney, Jr.
Leo H. Lawrence, Jr.
Charles Leavell
E. N. Lee
Finis Lee, Jr.
H. K. Leister
Oscer Lewis
P. C. Locke
William Lockhart
Roosevelt Loggin
Leon V. McAdoo
J. G. McAteer
Roosevelt McClelland
Phil McClendon
G. W. McCleskey
J. P. McConathy
F. A. McCoy
Lucious McDonald
Harding McElroy
Joe McElroy
V. R. McGough
F. E. McGowen
E. L. McGraw
Barney McHenry
O. O. McIlveene
W. A. McKenzie
Russell McLendon
O. O. McPherson
W. C. McWilliams
Otis A. Malone
Kenneth Manion
Earnest Marbray
Chester Marrable
R. L. Marsh
Fred Martin
Paul H. Martin
J. H. Mason
Eddie L. Massey
Jimmy D. Massey
L. T. Mayes
W. M. Meadows
H. H. Merritt
Willie Millage
J. T. Miller, Jr.
J. H. Mills
A. P. Mitchell, Jr.

Willie Modica
Robert Mollerberg
Boyd Moore
C. E. Moore
Horace Moore
Nilon Moore
P. A. Moore
W. D. Moore
Glen W. Moorhead, Jr.
Luster Moses
D. O. Murphy
F. E. Murphy
O. T. Murphy
T. W. Murphy
J. F. Nabors
H. G. Naremore
L. M. Nash
N. A. Nash
Fred L. Newsom
L. C. Newton
Falton Nisley
C. A. Norfleet
E. C. Norris
Ted T. Novick
J. A. O'Brien
H. C. Odom, Jr.
Printice O'Guinn
C. C. Orr
J. T. Orren
R. W. Overman, Jr.
A. D. Owens
Howard Owens
John Palmore
C. D. Parnell
J. W. Pennington, Jr.
Earl Perdue
W. H. Perrin
Bobbie L. Phillips
D. W. Pipkin
S. M. Plair
Conroy Post
D. D. Powell
D. M. Powledge, Jr.
W. C. Primm
L. F. Proctor
E. L. Purifoy
F. J. Pynes
J. M. Quimby
J. E. Raley
J. J. Ramey
Harold Ramsey
J. W. Ratcliff
J. T. Rea
Curtis Reed
Grafton Reed
J. R. Reed
Thomas Lee Reed
George W. Reedy
L. R. Reid
A. M. Reynolds
A. O. Rhoades
V. H. Rhodes
A. B. Richardson
Ira O. Risher
J. H. Risinger
Max O. Risinger
C. E. Ritchie
B. F. Ritchie
Alvin Roberson
D. C. Roberson

C. P. Roberson
J. S. Robertson
E. Y. Roberts
E. Robinson
R. L. Rogers
W. A. Rogers
J. E. Ross
J. R. Ross
H. P. Rowens
W. C. Rowland
H. R. Rybiski
Roy Sample
Isiah Sanders
D. N. Sands
E. F. Sanford, Jr.
C. L. Schrest
S. C. Sewell
Armstead Sharp
Beverly Shelby
E. P. Shelton
W. B. Shelton
V. A. Short
Burnette Shutes
R. A. Simms
D. E. Slater
D. M. Smalling
A. D. Smith
J. E. Smith
R. T. Smith
Thomas Smith
T. H. Smith
W. B. Smith, Jr.
Eddie Snowden
Jack Snowden
Paul Snowden
F. E. Solley
N. T. Spears
T. T. Spooner
James Springer
L. S. Spry
J. F. Stegall
D. R. Stevens
F. I. Stevens
Clarence Stone
Melvin Stone
A. Stott
H. M. Stringfellow
G. D. Sturdivant
Itha B. Sullivant
M. B. Sullivant
Kenneth Swiger
J. L. Talley, Jr.
James Talley
J. R. Tanner
John Tatum
L. P. Taunton
C. B. Taylor
L. C. Taylor
L. R. Taylor
W. E. Taylor
H. A. Telford
R. C. Templeman
W. E. Templeton
W. M. Templeton
Ray W. Terrell
Tommie Thigpen
Carl Thomas
J. E. Thomas
E. T. Thompson
M. H. Thompson

Ulyes Thurman
T. J. Tow
C. C. Townsend
J. M. Trammell
W. D. Trivillian
T. R. Tucker
W. C. Tucker
H. B. Turner
J. C. Vickers
C. N. Vinson
F. C. Vinson
Charlie Wade
T. D. Wagnon
Elzie B. Walker
J. D. Walls
G. J. Ward
J. G. Ward
R. J. Ward
T. F. Ware
George Washington
Mack Washington
Walter T. Washington
W. H. Waters
Sam Watson
Scipio Watson
Billy Waterfield
T. R. Webb
O. F. Welch
L. B. Wells
E. S. West
S. B. West, Jr.
R. E. Whatley
W. B. Wheelus
D. G. Whiddon
G. F. White
M. L. White
R. L. White
E. A. Whitten
W. J. Whitworth
Earnest Wiggins
Hays Wilkins
J. L. Wilkinson
Albert Williams, Jr.
Harper Williams
Henery Williams
Homer Williams
John Williams
J. W. Williams, Jr.
L. T. Williams
Prentis E. Williams
V. H. Williams
W. R. Williams
Eddie Willis
H. G. Wilson
J. M. Wilson
W. E. Wolfe
C. D. Wooley
F. M. Wright
Dan N. Wylie
Clois Yates
E. B. Young
J. H. Young
B. F. Zornes
C. G. Zwahlen

Answer of Respondent, Lion Oil Company, to the Complaint Filed Against It in This Case

Comes Lion Oil Company, Respondent in this case, and for its answer to the complaint against it herein filed, states:

I.

The Respondent denies the allegations contained in paragraph I of the complaint, and states that the Respondent, Lion Oil Company, has at all times mentioned in the complaint, and now is, a corporation duly organized and existing under the laws of the State of Delaware.

II.

The Respondent admits the allegations contained in paragraph II of the complaint.

III.

The Respondent admits the allegations contained in paragraph III of the complaint.

IV.

The Respondent admits the allegations contained in paragraph IV of the complaint.

V.

The Respondent denies each allegation contained in paragraph V of the complaint. Since June 27, 1947, Oil Workers International Union, C.I.O. (hereinafter referred to as "Union") has been the representative for collective bargaining with the Respondent of employees of the Respondent working at its Chemical Plant mentioned in the complaint in the operating department, in chemical laboratories, and of all persons working at that Plant as laborers, maids and janitors. At all times mentioned in the complaint herein filed, the Respondent has had in its employ at the Chemical Plant mentioned in the complaint approximately 250 persons in the maintenance department

thereof, who were represented by International Association of Machinists, Local 224, as their exclusive agent for bargaining collectively with the Respondent, and has employed at said Plant numerous persons who serve either as guards, firemen, foremen or supervisors, no one of whom is represented by anyone for collective bargaining with the Respondent.

VI.

The Respondent has no knowledge of any fact alleged in paragraph VI of the complaint and, therefore, denies each allegation contained in that paragraph.

VII.

The Respondent denies each allegation contained in paragraph VII of the complaint, and in connection therewith reiterates the allegations contained in paragraph V of this answer.

VIII.

The Respondent admits that it has recognized the Union as the exclusive bargaining agent of the employees of the Respondent as stated in paragraph V of this answer, but denies that since June 21, 1952, or at any other time, it has refused to bargain collectively with the Union as the agent of said employees or any of them.

On the 24th day of August, 1951, the Union notified the Respondent of its desire to amend the contract which was then in effect between the Respondent and the Union governing working conditions of employees working at the Respondent's Chemical Plant mentioned in the complaint and represented by the Union. On the same day the Union notified the Federal Mediation Service and the Arkansas Commissioner of Labor of the existence of a labor dispute between the Union and the Respondent. The first meeting between the Union and the Respondent, in an attempt to agree upon amendments to that contract, was held on August 29, 1951, and between that date and April 30, 1952, the date upon which the strike here in-

volved began, 37 meetings between representatives of the Union and the Respondent were held for that purpose.

Subsequent to April 30, 1952, representatives of the Respondent and of the Union held 27 meetings in an effort to settle the differences between them, and reached a settlement of their differences by the execution of a contract in writing on August 3, 1952.

IX.

The Respondent admits that on April 30, 1952, all of the employees of the Respondent, who were working at the Chemical Plant of the Respondent and were represented by the Union, went upon strike against the Respondent. Said strike was called by the Union in an effort thereby to induce the Respondent to agree to increase the wages of the employees of Respondent represented by the Union and to extend to them other benefits. Respondent states that 30 of the persons whose names are listed on Appendix A to the complaint have worked for Respondent at its Chemical Plant during a part of the period from April 30, 1952, to August 4, 1952.

X.

The Respondent denies that on June 21, 1952, or at any other time, the striking employees of the Respondent mentioned in paragraph IX of this answer made an unconditional offer to return to work.

The Respondent admits that on June 21, 1952, an international representative of the Union offered, in behalf of the striking employees, that the employees return to work for the Respondent under the provisions of the contract which was in effect between the Respondent and the Union on April 30, 1952, covering the conditions under which those employees were at that time working for the Respondent and that negotiations for amendments to that contract be continued thereafter. In making such offer, the Union refused to agree, in behalf of said employees, that they would continue to work for the Respondent for any period if the Respondent permitted them

to return to work under the terms of said agreement. At all times since April 30, 1952, and for some time prior thereto, the Union, as the representative of those employees, and those employees, has and have constantly contended that under the provisions of said contract which existed between the Union and the Respondent on April 30, 1952, the employees of the Respondent represented by the Union had a right to strike at any time, in spite of the fact that said contract remained in full force and effect.

That contention of the Union, as the representative of said employees, and of those employees, was continuously maintained until August 4, 1952, at which time the strike was settled by the Union and the Respondent executing a contract in writing under the terms of which the employees represented by the Union returned to work at said Chemical Plant.

The Respondent states that the offer made by the Union, as hereinbefore stated, was not made in good faith and alleges that the purpose of the Union in making such offer was to cause the employees represented by it to return to work at the said Chemical Plant of the Respondent and subsequently disrupt the operation of said Plant by intermittent, unannounced work stoppages. The further purpose of the Union in making said offer was to strengthen its position in bargaining with the Respondent for an increase in wages and other benefits for the employees whom it represented by causing the employees of Respondent represented by it to return to work at the Plant and thereafter hold over Respondent the threat that those employees would again strike against the Respondent if the demands of the Union in bargaining for them were not met.

When the offer that the employees on strike return to work on the conditions hereinbefore stated was made by the Union, the Chemical Plant of the Respondent was being operated by supervisory employees of Respondent, approximately 250 machinists, represented by International Association of Machinists, Local 224, and a few men represented by the Union, at full capacity for the production of all products which it normally produced excepting

prilled ammonium nitrate and ammonium sulphate. There were no picket lines at the Plant when the Union made said offer, the employees represented by it having been enjoined from picketing by a temporary restraining order which was in effect for the period beginning June 4, 1952, and ending July 2, 1952.

No offer to return to work was made by the Union, or the employees represented by it, other than the conditional offer made by the Union as hereinbefore stated.

On four occasions prior to June 21, 1952, a group composed of some of the employees of the Respondent represented by the Union reported to the Chemical Plant of the Respondent for work. In each instance the offer to return to work was in bad faith, for the purpose of disrupting the Respondent's operation of its Plant, and to place the group of employees involved in a position to effectuate intermittent work stoppages at said Plant to harass and damage the Respondent.

On June 21, 1952, as a counter proposal, to the Union's offer that the employees involved in the strike return to work under the contract in effect April 30, 1952, the Respondent offered to permit the employees to so return to work if the Union would agree that they remain at work until July 1, 1953, and not strike prior to that date.

XI.

The Respondent denies each allegation contained in paragraph XI of the complaint, and alleges that at all times between April 30, 1952, and August 4, 1952, it considered and treated each person represented by the Union, who was on strike at its Chemical Plant mentioned in the complaint, as an employee of the Respondent and extended to them benefits as such.

The Respondent admits that at all times subsequent to May 30, 1952, and prior to the settlement of the strike, by the execution, on August 3, 1952, of the contract between the Union and the Respondent, the Respondent refused to permit the striking employees represented by the Union to return to work at said Plant unless they would

agree to remain at work for an agreed period without striking during that period.

XII.

The Respondent denies each allegation contained in paragraph XII of the complaint and further states that it has not at any time refused to grant, to any employee of the Respondent represented by the Union while said employee was on strike or not on strike, any right, privilege or benefit, or refused to reinstate any one of said employees, because of the employee's membership in the Union, or any activity by the employee in connection with the Union, and denies that it has committed any act, or omitted any act, with respect to any one of such employees because of the membership of the employee in the Union, the activities of the employee in the Union, or any concerted activities of any employees represented by the Union.

XIII.

The Respondent denies each allegation contained in paragraph XIII of the complaint.

XIV.

The Respondent denies each allegation contained in paragraphs XIV, XV, XVI, XVII, XVIII and XIX of the complaint, and denies that at any time it has by any act or omission of act, in its relations with the Union or any one of the employees of Respondent represented by the Union, engaged in any unfair labor practice within the meaning of the Labor Management Relations Act of 1947.

XV.

The replacement value of the Chemical Plant of the Respondent at which the strike here involved occurred is in excess of $50,000,000.00. The Plant produces anhydrous ammonia from hydrogen obtained from natural gas and steam and nitrogen obtained from the air. The greater part of the anhydrous ammonia produced is converted

into ammonium nitrate solutions, ammonium sulphate, and prilled ammonium nitrate. One of the intermediate steps is the conversion of anhydrous ammonia to nitric acid. Raw sulphur is converted into sulphuric acid, which acid is used in the manufacture of sulphate of ammonia. The Plant is divided into principal units as follows: a unit for manufacturing anhydrous ammonia, units for the manufacture of nitric acid, a unit for the manufacture of ammonium nitrate solutions, a unit for prilling ammonium nitrate, a unit for the manufacture of sulphuric acid, and a unit for the manufacture of ammonium sulphate. Some of the equipment in the Plant is operated at extremely high temperature and at extremely high pressure. In several units a catalyst of great value is employed in the manufacturing process, which catalyst is in short supply. In other units in the Plant, expensive alloy tubes are employed at high temperatures to bring about certain chemical reactions.

The Plant is operated continuously. Normally the employees in the operating department of the Plant work in three shifts of eight hours each, effecting an around the clock continuous operation of the Plant.

The facilities for the manufacture of anhydrous ammonia are of a nature such that when that unit of the Plant is shut down there is great likelihood that the catalysts employed therein will be destroyed at great loss to the Respondent, and there is in each such instance of shut down great danger of damage to the equipment, even though the shut down is accomplished with the greatest care and skill. When the facilities for the manufacture of anhydrous are shut down, the danger of damage to the equipment in again putting it in operation is equally grave as that which exists upon a shut down of the equipment, and a minimum of ten days is required to bring production to full capacity. When the unit for the manufacture of prilled ammonium nitrate or the unit for the manufacture of sulphuric acid or the unit for the manufacture of ammonium sulphate is shut down, the unit must be purged of all material contained in it because of the corrosive nature of the materials which would otherwise remain in the equipment. To restore each of the three units last

mentioned to full production after a shut down requires several days.

When the strike here involved began at 11 p. m. on April 30, 1952, the Respondent had no basis upon which to arrive at any estimate as to how long the strike would last. Because of that fact and taking into consideration the characteristics of the Plant hereinbefore stated, the economic loss that would be caused the Respondent, and the danger of damage to the Plant involved in shutting it down and again putting it into operation, the Respondent determined to minimize its possible loss and the possibility of damage to its Plant by continuing the operation of the Plant, to the limit of its ability, through the services of supervisors employed at the Plant at the time the strike began.

Consequently, when the strike began, the supervisors shut down all production units in the Plant with the exception of the facilities for the manufacture of anhydrous ammonia and reduced the production of anhydrous ammonia by approximately 25%. As the strike continued, more efficient methods of operating units of the Plant by available supervisory personnel were evolved, full production of anhydrous ammonia was restored, and full production of ammonium nitrate solutions was accomplished, with the result that on the 21st day of June, 1952, the Plant was being operated at full production with the exception of the manufacture of prilled ammonium nitrate, sulphuric acid and sulphate of ammonia. On that date and thereafter the products manufactured at the Plant were being shipped therefrom in railroad tank car lots at regular intervals. At that time work was in process to begin without delay the manufacture of sulphuric acid and sulphate of ammonia.

The expansion of operations of equipment in the Plant was made possible to some extent by a number of employees of the Respondent employed in the maintenance department at the Plant and in the operating and labor departments at the Plant crossing picket lines and returning to work in the Plant, the number of those employees increasing from time to time as the strike continued.

The Respondent states that its refusal to permit striking employees represented by the Union to return to work at the Plant on and after June 21, 1952, was based solely upon the Respondent's belief that the purpose of the Union, and the men represented by it, in desiring to return to work, without an agreement that they would remain at work for any stated period and not strike during that period, was to disrupt the Respondent's operation of its Chemical Plant, to effectuate intermittent work stoppages at the Plant, to harass the Respondent, or to continue working at the Plant while holding over the head of the Respondent the constant threat of another strike in order to bolster the Union's position in bargaining with the Respondent.

XVI.

On the 1st day of May, 1952, the Respondent filed in the Chancery Court of Union County, Arkansas, a complaint against four of its striking employees employed in the operating department of its Chemical Plant, individually and as representative of all striking employees represented by the Union, in which the plaintiff sought a permanent injunction enjoining the defendants from picketing at the said Plant on the ground that their strike was in violation of the contract between the Union and Respondent under which they were working at the Plant at the time the strike began, and consequently picketing in connection therewith was for an unlawful purpose. The defendants filed answer to that complaint, being represented therein, among others, by the general counsel of the Union. On the 24th day of June, 1952, the defendants in that suit, acting through the same attorneys, filed an amendment to the answer to the complaint. In addition the defendants in that suit filed therein a cross complaint, in which cross complaint the defendants contended that the plaintiff had on May 31, 1952, and continuously thereafter, locked out the defendants from their employment with the plaintiff and that the plaintiff had refused to permit defendants to enter its Chemical Plant or to perform any work for the plaintiff. In their cross complaint the defendants asked an injunction against the plaintiff enjoining the plaintiff from

locking out or refusing to employ the defendants at the plaintiff's Chemical Plant.

On the 2nd day of July, 1952, the complaint of plaintiff and the cross complaint of the defendants in said suit was heard by the Chancellor presiding in said court and a decree was rendered dismissing the plaintiff's complaint for want of equity and dismissing the defendants' cross complaint for want of equity.

The Respondent pleads said decree as a complete defense to the complaint made against it in this case, that it locked out any one of its employees represented by the Union as charged in this complaint, and states that that decree precludes any relief being given to any one of said employees as a result of the Respondent's refusal to permit any one of them to return to work at its Chemical Plant during the period beginning June 21, 1952, and ending August 3, 1952.

XVII.

At the time the strike here involved began on April 30, 1952, there was in effect between the Union and the Respondent a contract governing the conditions under which employees of the Respondent, working for it at its Chemical Plant and represented by the Union, should work for the Respondent. The strike here involved, called by the Union on that date, was in violation of that agreement and constituted an unfair labor practice under the provisions of the Labor Management Relations Act of 1947. By that fact no one of the employees who participated in that strike is entitled to any relief under the provisions of said act even though it be established, in this case, that the Respondent was guilty of an unfair labor practice within the meaning of the Labor Management Relations Act of 1947 in refusing to permit that employee of the Respondent to return to work at the Chemical Plant of the Respondent during the period beginning June 21, 1952, and ending August 3, 1952.

XVII.

The Union and the leaders of the employees of Respondent represented by the Union has and have consistently contended for the entire period from 11 p. m. April 30, 1952, to August 3, 1952, that the contract between the Union and the Respondent which was in effect at 11 p. m. April 30, 1952, remained in full force and effect until August 3, 1952.

That contract contained the following provision:

> "Any employee who has been off on an unauthorized absence not due to illness or injury shall not be allowed to return to work without giving eight hours' notice of his intention to return to work."

Each of the employees of the Respondent here involved was off duty on "an unauthorized absence not due to illness or injury" between April 30, 1952, and June 21, 1952. At no time on or after June 21, 1952, did any one of said employees give to his supervisor, or to any other representative of the Respondent, any notice of his intention to return to work eight hours prior to the time at which the employee intended to return to work. No one of the employees here involved reported to the Chemical Plant for work during the period beginning June 21, 1952, and ending August 3, 1952.

The Respondent states that said contract, including the provision thereof hereinbefore quoted, was in full force and effect for the entire period beginning June 21, 1952, and ending August 3, 1952, and that by reason of the facts stated in this paragraph XVIII, this Respondent was within its legal right in refusing to permit any one of the employees here involved to return to work at its Chemical Plant during said period.

XIX.

If as a matter of law the Respondent did lock out its employees here involved during the period beginning June 21, 1952, and ending August 4, 1952, which Respond-

ent denies, it had, under the Labor Management Relations Act of 1947, the legal right to do so.

XX.

During the period beginning June 21, 1952, and ending 7 a. m. August 4, 1952, the hour at which employees of the Respondent here involved returned to work at its Chemical Plant under the contract executed August 3, 1952, some of the employees of the Respondent represented by the Union worked at said Chemical Plant continuously, and some of the employees of the Respondent represented by the Union worked for the Respondent at the said Plant for a part of the period. Many of the employees of Respondent represented by the Union worked during the period last stated for some person or persons other than the Respondent, many of them working for contractors engaged in constructing an ordnance plant at Pine Bluff, Arkansas.

If it should be determined in this case that the Respondent acted wrongfully in refusing, on or after June 21, 1952, to reinstate any one of its employees here involved and that the employee involved is entitled to recover from the Respondent a sum of money equivalent to the amount which he would have earned working for Respondent during the period from June 21, 1952, to August 4, 1952, the Respondent should be credited against said claim with the amount, if any, earned by that employee in working for Respondent or for another employer during the period involved, or with a part of that amount to be determined.

WHEREFORE, the Respondent prays that the complaint filed against it in this case be dismissed.

Lion Oil Company
By Jeff. Davis
Lion Oil Building
El Dorado, Arkansas

VERIFICATION

STATE OF ARKANSAS
COUNTY OF UNION

I, Jeff Davis, under oath, state that I am General Counsel for Lion Oil Company, Respondent in the case mentioned in the caption of the foregoing answer, and that the allegations contained in the foregoing answer of Lion Oil Company are true and correct according to my best knowledge and belief.

Jeff. Davis

Sworn and subscribed to before me, a Notary Public in and for Union County, Arkansas, on this the 18th day of August, 1952.

Ann S. Plair

(Seal)

Notary Public in and for
Union County, Arkansas

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

Case No. 15-CA-488

In the Matter of

LION OIL COMPANY

and

OIL WORKERS INTERNATIONAL UNION, C.I.O.

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Lion Oil Company, a corporation duly organized and operated under and by virtue of the laws of the State of Delaware, does by these presents hereby make, constitute and appoint Jeff Davis, of El Dorado, Arkansas, its true and lawful attorney, to appear for it and represent it before the National Relations Board in connection with all matters pertaining to the case pending before that

Board and mentioned in the caption hereof, giving its said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as the undersigned might do if done in its own capacity.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized officers under the corporate seal this the 18th day of August, 1952.

Lion Oil Company
By R. E. Meinert
Vice President

(Seal)

Attest:

L. M. Arrable
Assistant Secretary

STATE OF ARKANSAS
COUNTY OF UNION

Subscribed and sworn to before me, a Notary Public, on this the 18th day of August, 1952.

Ann S. Plair
Notary Public

(Seal)

My commission expires: 9-19-53

General Counsel's Exhibit No. 3.

UNION, C. I. O.

Preamble

Articles of Agreement between LION OIL COMPANY, hereinafter referred to as "Company" and OIL WORKERS INTERNATIONAL UNION, C. I. O., hereinafter referred to as "Union", whom the Company recognizes as the exclusive bargaining agency for all production, chemical, and operating employees and all janitors, porters, maids, and other common laborers at its chemical

plant located North of El Dorado, Arkansas, for the purpose of collective bargaining with respect to hours of work, rates of pay, wages, and other conditions of employment, all in accordance with the National Labor Relations Board's Directive Orders in Case No. 15-R-1039, Case No. 15-R-1587, Case No. 15-R-2004, and the applicable Federal Law. There is excepted from the bargaining unit described all maintenance employees not otherwise described within this Preamble, guards, firemen, office and clerical employees, non-working foremen, and all supervisory employees.

ARTICLE I

Term of Agreement

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the sub-section immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective.

ARTICLE II

Right to Arbitrate

All grievances and disputes as to classifications, hours of work, and other working conditions, arising between the Company and employees shall be governed in manner of settlement by the terms of this agreement. Whenever any grievance or dispute arises which cannot be otherwise adjusted, the parties hereto agree that the same shall be decided in the manner provided for in Article III.

ARTICLE III

Grievance Procedure and Arbitration

Section 1. Each Grievance shall be adjusted as follows:

First Step.

The aggrieved employee and/or his steward shall verbally discuss the grievance with his foreman. If the foreman's verbal reply is not satisfactory, the employee and/or his steward shall submit the grievance in writing to the foreman. The foreman to whom a grievance is submitted in writing, shall give his written reply within 24 hours after receipt of the grievance, excluding Saturdays, Sundays, and holidays.

Second Step.

If the written decision of the foreman is not satisfactory, the Chief Steward shall submit the grievance in writing to the head of the department in which the grievance arose, who shall give his reply in writing within 72 hours after receipt of the grievance, excluding Saturdays, Sundays and holidays.

Third Step.

If the decision of the applicable department head is not satisfactory, the Chief Steward shall submit the grievance to the Workmen's Committee and if, after a thorough investigation, it is decided by the Workmen's

Committee that the grievance does have merit, it shall be submitted in writing to the Plant Superintendent, who shall have five days, after receipt of the grievance, excluding Saturdays, Sundays, and holidays, in which to render a written decision.

Fourth Step.

If the decision of the Plant Superintendent is not satisfactory, the Workmen's Committee may submit the matter in writing to the Director of Industrial Relations, for the Company, with a copy submitted to the Plant Superintendent, and the Director of Industrial Relations shall render his decision within ten days following receipt of such notice, Saturdays, Sundays, and holidays excluded. Within ten days following the receipt of the written decision of the Director of Industrial Relations, the Workmen's Committee shall notify the Director of Industrial Relations in writing as to whether his decision is satisfactory.

Fifth Step.

If the grievance is not satisfactorily adjusted through the procedure hereinbefore set forth, the grievance shall be referred for decision to an arbitration board consisting of three persons who shall be selected as hereinafter stated.

Within three days of the receipt of the notice hereinbefore last mentioned, the Director of Industrial Relations shall, in writing, inform the Workmen's Committee the name of the person selected by the Company to serve as a member of the arbitration board for the settlement of the grievance involved. Within three days of the receipt of such notice, the Workmen's Committee shall inform the Director of Industrial Relations in writing as to the name of the person chosen by the Workmen's Committee to serve upon said arbitration board. Within the following three days, the two members so named and selected shall attempt to agree upon the person to serve as the third member of the board. If the two members first selected to serve upon the board are unable, within the time mentioned, to agree as to the person to serve as the third member, they, or either of them, shall immediately notify the

Company and the Workmen's Committee of that fact. Within three days of the date of the receipt of such notice, the Company, acting through the Director of Industrial Relations and the Workmen's Committee, shall jointly request the American Arbitration Association to designate a person to serve as the third member of the board.

When the board of three has been so selected, it shall meet for the consideration of the grievance as soon thereafter as is practical. Any such meeting of an arbitration board shall be held in El Dorado, Arkansas, unless the board unanimously decides otherwise.

Any such arbitration board shall decide the grievance submitted to it upon testimony presented to it by the Union and the Company in a public hearing, and shall render its decisions in writing, the decision of any two, or more, members to be the final decision of the board.

The expense in connection with the service of the third member of the board shall be paid equally by the Company and the Union. The Union and the Company shall respectively bear the expense of its representatives named to serve upon any arbitration board.

Each party hereto shall comply fully with each award or decision made by any such arbitration board.

Section 2. No provision of this Article III or of any other Article of this agreement shall deprive any employee covered by the terms of this agreement of any rights to which he may be entitled under Section 9 (a) of the Labor-Management Relations Act of 1947, or any other Statute of the United States.

Section 3. The Workmen's Committee above mentioned, composed of five members, shall be elected from among and by employees of the Company, who are covered by this agreement. The Secretary of Local 434 of the Union and the Chairman of the Workmen's Committee will certify to the Company the duly elected members of the Workmen's Committee.

ARTICLE IV

Classification Changes

Section 1. An employee who is temporarily required to perform, for as many as three consecutive hours, work of a classification with respect to which the rate of pay is greater than the rate of pay for the classification to which the employee is at the time regularly assigned, shall be paid at the rate of the higher classification in which he is working so long as, and only so long as, he is required continuously to perform work of the higher classification.

Section 2. If an employee is temporarily shifted to any classification paying a smaller wage rate than his regularly assigned classification, no reduction in rate shall be made during the first two weeks.

Section 3. An employee who, because of reduction in the working force, and through no fault of his own, is to be permanently demoted, discharged, or laid off, shall be given two weeks' notice of the date upon which he shall be permanently demoted, discharged, or laid off. In the absence of such notice, an employee who is demoted shall suffer no reduction in his wage rate for two weeks after his demotion, and an employee laid off or discharged shall receive, in lieu of notice, a sum equal to two weeks' pay at straight time for his regular weekly hours.

Notice or pay in lieu of notice referred to in this Section 3 shall not be required if layoff is due to reduction in force caused by fire, storm, explosion, or strike by employees of another employer.

Section 4. All work peculiar to any classification (job) shall be done by employees regularly assigned to that classification (job) except in cases of emergency. No arbitrary changes in present classifications, or duties thereof, will be made with the purpose or result of reducing the pay of any classification (job). Any man who has available time over and above his normal duties shall assist the men of his own classification or of lower classification in his own section.

Section 5. Except in cases of emergency, no foreman, supervisor, or employee not covered by this agreement shall do any work peculiar to any classification, the performance of which would cause any employee to suffer layoff or loss of pay. The Company shall use technical employees from time to time to check tests and observe operating conditions, the performance of which would not cause any employee to suffer layoff or loss of pay.

ARTICLE V

Hours of Work

Section 1. The regular hours for work shall be eight hours per day and forty hours per work week. One and one-half times the applicable hourly rate as set forth on Exhibit "B" hereto will be paid as full compensation for all work in excess of eight hours in any one day, or forty hours in any one work week.

All hours worked in excess of eight, when more than eight hours have been worked in succession, shall be deemed to have been worked within the day in which that succession of hours worked began; provided, however, (1) that if such succession of hours worked began on one of the holidays mentioned in Article VIII hereof and ended on the following day, the Company shall pay with respect to those hours worked after the conclusion of the holiday only one and one-half times the applicable hourly rate as set forth on Exhibit "B" hereto, rather than double time as provided in Article VIII, and (2) that if this succession of hours worked extends into a holiday, double time shall be paid for those hours worked during such holiday.

Section 2. The work week shall begin at 11:00 p. m. on Sunday and end at 11:00 p. m. on the following Sunday. The work day shall begin at 11:00 p. m. and end at 11:00 p. m. on the following day.

Section 3. The work schedules and shift schedules, which are presently in effect and which are made a part of this contract as Exhibit "C", shall, subject to the provisions of Sections 9 and 14 of Article X, remain in full force and effect for the term of this agreement.

Section 4. If, in the event of curtailment of production, it becomes necessary to reduce personnel within the bargaining unit by more than thirty per cent, the Company and the Union will immediately begin negotiations with respect to the matter of hours and length of work week.

Section 5. The payment of additional compensation for any hours worked in excess of eight hours in any one day or forty hours in any one work week shall be in satisfaction of the obligation of the Company under this agreement, the Walsh-Healey Act, if it is applicable thereto, or under the Fair Labor Standards Act, if it is applicable thereto, as such acts now exist, provided, however, if either or both of said acts is, or are, amended, such amendment or amendments shall not affect this agreement. There shall be no duplicate payment for daily overtime and weekly overtime. If daily overtime is greater in any one work week, only daily overtime shall be paid, or, if weekly overtime is greater in any one work week, only weekly overtime shall be paid.

Section 6. Notwithstanding any other provision of this agreement to the contrary, no employee, except in case of emergency, shall be allowed or required to work more than sixteen (16) consecutive hours.

If an employee covered in Exhibit C-7, part 7, works continuously in excess of twelve (12) hours, said employee shall be paid double time for the continuous hours in excess of twelve (12).

All other employees who work more than sixteen (16) continuous hours shall be paid double time for the continuous hours in excess of sixteen (16).

ARTICLE VI

Callouts, Overtime, and Local Notification

Section 1. An employee called out for work outside his regular working hours, or held over for as much as one hour, in a case in which his relief is not late, shall be paid a minimum of three hours at straight time at his regular rate, even though the full three hours may not be worked

or he does not at work at all. An employee called out for work outside his regular hours will not be deprived of completing his daily schedule of hours on account of the extra hours worked on such callout. An employee called out for work who works continuously until the beginning of his regular work and continues to work the regular hours of his scheduled work shall not be considered to have had a change in shift within the meaning of Section 3 of this Article VI. Notwithstanding the fact that an employee has been called out for work, such an employee shall be required to perform his regular work scheduled during the remainder of the work week in which such callout occurs unless excused by the Company.

Section 2. If an employee reports to work on time as scheduled, he shall be given the opportunity of working a full eight-hour shift. If an employee reports to work late for a scheduled work day and arrangements have been made to have an employee work overtime in his place, the Company shall allow the employee, who reported to work late, to work the remainder of his regular schedule, and the employee who is working overtime due to such employee being late will be relieved of duty.

Section 3. No employee shall lose any time from his normally scheduled forty-hour week occasioned by any shift change. However, any employee who is working extra to complete his forty hours per week, may be used as a relief man for filling vacancies in his section. The Company further agrees that such employee, excepting those regularly assigned to the relief pool and those regularly employed as relief testers in the chemical laboratory, shall receive 24 hours' notice prior to any change in his shift, or in lieu thereof, the employee shall receive time and one-half for the first shift worked; however, no such extra pay shall be paid when an employee's shift is changed incident to his promotion to a higher job, or when he is returned to his regular classification from an advancement.

Section 4. If an employee is instructed to work and does work continuously for as much as two hours before or beyond his regular shift or schedule, he shall be paid a

sum equivalent to thirty minutes at straight time pay in lieu of meal time.

ARTICLE VII

Shift Men—Day Men

The term "shift employee" as used herein shall be deemed to mean one who is employed for specific periods in the course of continuous operations regularly carried on during two or more shifts per day, seven days a week; each other employee is a "day employee".

ARTICLE VIII

Holiday Pay

Each of the following days is a holiday:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
July Fourth	Christmas Day

Each of the above-mentioned holidays shall be deemed to begin at 11:00 p. m. on the day immediately preceding the holiday and end at 11:00 p. m. on the holiday.

Each employee shall be paid double time for each hour worked on a holiday, regardless of the number of hours worked in the work week in which the holiday falls; provided that if an employee works less than eight hours on any one holiday he shall be paid, with respect to that day, in addition to the sum which he has earned at double time for hours worked on that day, straight time for any hours less than eight which he worked on that day.

Each employee, covered by this agreement, who does not work on a particular holiday shall be paid with respect to that holiday a sum equal to his regular straight time for eight hours worked, provided that no such payment shall be made to a person with respect to a holiday, if he is on that day on leave of absence or does not work on that day because he has been previously laid off.

All employees covered by Exhibit C-7, whose services are not required on a holiday, shall be so notified and

shall not be required to work on the holiday. Any change as a result of such notice shall not be construed as a change in shift within the meaning of Section 3 of Article VI. All other employees shall be expected to work their normal schedule on any holiday.

Any employee covered by Exhibit C-7, who does not work on a holiday, or works less than eight hours on a holiday, shall be credited with eight hours and only eight hours work on that holiday in computing weekly overtime to which he is entitled for the work week in which that particular holiday occurs.

ARTICLE IX

Vacations

Section 1. Any employee who on the effective date of this agreement or on a day subsequent thereto, has accrued one year but less than two years of Company seniority, shall be entitled to a vacation of one week (40 hours) in each calendar year with full pay based upon straight time at the rate of his regular classification for the number of hours per week which he normally works in accordance with the established work schedule in effect upon the date on which his vacation begins, plus the hours for holiday pay under Article VIII, if a holiday occurs within the vacation period.

Any employee who has accrued two years or more of Company seniority at the time he takes a vacation shall be entitled to a vacation of two weeks (80 hours) in each calendar year, with pay for each week as hereinbefore provided.

Any "shift employee" who has accrued two years or more of Company seniority at the time he takes a vacation shall be entitled to a vacation of eleven working days (88 working hours) in each calendar year, and shall be paid a sum equal to 88 hours at the hourly rate for his regular classification on the date on which his vacation began, plus the hours for holiday pay under Article VIII, if a holiday occurs within the vacation period.

Section 2. Each employee must take his vacation during the calendar year in which it falls due. Any employee who is entitled to 80 hours' vacation may request that his vacation be scheduled in two periods of 40 hours each. Any employee who is entitled to 88 hours' vacation may request that his vacation be scheduled in two periods, one being for 40 hours and one being for 48 hours.

Section 3. If any employee is not permitted to take his vacation in the calendar year in which it is due because the Company finds it not convenient to excuse him from work, such employee shall be paid a sum equal to the sum to which he would have been entitled if he had taken his vacation within the period of time immediately preceding the end of the year which period is equal to his vacation period.

Section 4. No employee shall be permitted to begin a vacation in any calendar year within six months if the date of the end of the vacation taken by him during the preceding calendar year with the provision, however, that an employee who has received pay in lieu of vacation for one calendar year shall be entitled to his next annual vacation at any time during the next succeeding calendar year.

Section 5. Any employee who leaves the service of the Company for any reason, and who is then otherwise eligible for a vacation but has not taken it, shall be given pay in lieu thereof, on the basis hereinbefore stated.

Section 6. Normally all vacations shall begin at 11:00 p. m. Sundays, except the vacation that includes eleven working days may be begun at 11:00 p. m. Saturday, and shall be taken in one continuous period. Any exceptions to this rule shall not disrupt the vacation schedule of other employees and shall be permitted only with the consent of the Company.

ARTICLE X

Seniority

Section 1. Seniority shall be adhered to in all promotions, demotions, and layoffs, other than discharges for just cause.

Section 2. A Newly Established Operating Section.

In the selection of operating personnel for a new section, such selection shall be based on Operating Department seniority. If a Sr. Operator, Operator, or Jr. Operator is required, the standard qualifications for jobs in a new section shall be:

1. For Senior Operator.

Experience for six months as a regularly assigned Senior Operator within the Operating Department, or experience for twelve months as a regularly assigned Operator, or higher, within the Operating Department, or experience for eighteen months as a Senior Helper, or higher, in the Operating Department, or work for six months as a trainee in the new section.

2. For Operator.

Experience for six months as a regularly assigned Operator within the Operating Department, or regularly assigned work for twelve months within the Operating Department, or for six months as a trainee in the new section.

3. For Junior Operator.

Work for six months in the Operating Department, or work for three months as a trainee in new section.

The classifications to be established in any new section shall be discussed with the Workmen's Committee not less than ten days prior to the posting of new jobs in that section. Each new job shall be posted on the Company Bulletin Board and the Union Bulletin Board for a period of fifteen days, during which period signed bids for the job shall be received. At the end of said period, the successful bidder for each such new job shall be determined, as provided in this Section 2 of Article X.

Section 3. In applying the seniority provisions of this agreement each employee shall be credited with the seniority, if any, to which he is entitled as shown on the records of the Company at the time of execution of this agreement.

Section 4. Promotion Chart.

Attached hereto as Exhibit "A" and made a part hereof is a Promotion Chart showing all classifications (jobs) in the bargaining unit, and the various sections in each department, including the relief pool in the Operating Department. Only those employees covered by the terms of this agreement and included in the bargaining unit shall be entitled to exercise their seniority in their respective departments.

Notwithstanding any other provisions of this Article X, in order for an employee to be eligible to bid on a job posted as a vacancy in the Chemical Laboratory, he must have the following additional qualifications: (1) a minimum of a diploma from an accredited high school with credit achieved in a course in elementary chemistry or physics, or (2) experience which is the equivalent thereof.

Section 5.

(a) Subject to the provisions of Section 10 of this Article X, departmental seniority shall be cumulative and shall be continuous from the date on which the employee first enters the department involved as shown on the Promotion Chart attached hereto.

(b) Subject to the provisions of Section 10 of this Article X, sectional seniority shall be cumulative and shall be continuous from the date on which the employee first enters any particular section.

(c) In the event an employee has transferred from one section to another section, by reason of (i) a sectional shutdown, (ii) reduction in force in this section, or (iii) the return of an employee to that section after an absence in excess of 30 days, he shall retain his seniority in the section from which he was so transferred until he has failed to bid for a permanent vacancy in the section from which he was so transferred. However, if an employee in any section elects to bid on a job in another section and is the successful bidder, upon his transfer he shall then lose his accrued seniority in the section from which he bid. The provisions of this sub-section (c) shall not apply

to failure of one to bid for a job, the bidding on which occurs while he is laid off from work.

Section 6. New Employees.

(a) All new employees coming into the Operating Department shall be first assigned into the relief pool and by their seniority shall advance to any of the sections in the Operating Department by bidding on a posted job.

(b) All new employees coming into the Labor Department shall be first assigned into the labor pool and by their seniority shall advance to any of the sections in the Labor Department by bidding on a posted job.

Section 7. Filling Permanent Vacancies.

When a permanent vacancy occurs in any section in a department of the bargaining unit, the senior employee in the next lowest classification in that section shall without bidding be promoted until only the lowest classification in that section is left vacant, which vacancy shall be filled in the following manner:

(a) The lowest job vacancy in that section shall be posted within five days, excluding Saturdays, Sundays, and holidays, for bid on the Company and Union Bulletin Boards for a period of fifteen days.

(b) Immediately upon expiration of the posting period of fifteen days, the names of all bidders will be posted on the bulletin board. The bidders on the posted job will be contacted to ascertain their desire to accept the job. The successful bidder will be transferred to the new job as soon as possible following his acceptance of the job. The successful bidder's seniority in the section to which he is transferred will be retroactive to the sixteenth day after the job was posted. Each bidder will be expected to accept or reject the job within eight hours after he is contacted, provided he can be advised at that time of the status of bidders above him in seniority on that job. If he fails to advise the Company of his decision within the prescribed eight hours, he will forfeit his rights to that job.

In the event that no one wishes to accept the posted job, the last man employed in the relief pool and still working in the relief pool shall be assigned to that job; however, this assignment will not in any way affect the forty-five day probationary period of the employee, provided he has not completed his forty-five days' continuous employment with the Company.

If a permanent vacancy occurs in the Janitor Section the vacant assignment will be offered to all Janitors in order of their seniority. If no Janitor desires said assignment, then the vacancy will be posted for bid in accordance with this Section 7.

Notwithstanding any other provision of this Section 7, it is agreed that the Company shall have the right at any time during said fifteen-day posting mentioned above to withdraw that posting in the event the Company decides that such vacancy need not be filled. The provisions of this paragraph will not apply to filling normal vacancies.

Section 8. Filling Temporary Vacancies.

(a) Vacancies of More than 30 Days.

In the event a temporary vacancy exists for a period of more than thirty days in any section of the Operating Department, the senior employee in the next lower classification in that section shall be promoted on the thirty-first day until only the lowest classification in that section is left vacant, which temporary vacancy shall be posted for bid and filled in accordance with the applicable provisions of Section 7 above.

(b) Vacancies of 30 Days or Less.

1. When an employee is on vacation, he will be relieved while on vacation by the man working on the same shift (graveyard, day or evening shift) in the same section who is the senior employee in the next lower classification. The senior employee in the next lower classification in that section on the same shift shall be promoted until only the lowest classification in that section on that shift is left vacant, which vacancy will be filled by assignment by the Company from the relief pool; how-

ever, when a replacement cannot be secured from the relief pool, the man who is not relieved, because of vacation, shall have the first opportunity to work the double shift as outlined in the doubling procedure. If a relief pool man, who has been assigned to fill such a vacancy, is absent or fails to relieve an employee, the temporary vacancy caused thereby shall be considered as occurring in his classification and if no additional relief pool man is available, the man in the classification in which the vacation relief pool man was scheduled but failed to work shall be entitled to work the double shift as outlined in the doubling procedure.

When the 21 Shift man (shift breaker) is on vacation, he will be relieved for the entire number of days he is on vacation by the senior man in the next lower classification on the same shift in the same section at the regular rate of pay of the 21 Shift man. The 21 Shift man shall not be used for vacation relief except when he is eligible to get upgraded; in which event, he shall be relieved in the same manner as if he were on vacation himself. However, when there is no one eligible on the same shift in the same section to relieve the 21 Shift man when the 21 Shift man is on vacation or upgraded due to a vacation, and the 21 Shift man on his regular schedule would be extra or filling a regular Sr. Helper's job, no one will be doubled to work the 21 Shift as an extra man or as a Sr. Helper; and in this case the 21 Shift will not be filled.

2. Except when he is on vacation or on vacation relief (upgraded due to a vacation), no employee will be upgraded to replace the 21 Shift man when the 21 Shift man is scheduled to be extra.

3. If there is a vacancy of seven days or less in a shift in any section of the Operating Department, which vacancy is not the result of an employee taking his vacation, and there is a 21 Shift man, or are 21 Shift men, on duty, who on their regular 21 Shift schedule are not relieving an employee, such 21 Shift man or men in that section shall be designated to fill such vacancy or vacancies.

4. When there is a vacancy of seven days or less on any shift in any section of the Operating Department which is not the result of a vacation, and there is not a 21 Shift man available to fill the vacancy as outlined above, and there is a man available in the relief pool who can be used for replacement, the vacancy will be filled by the employee working on the same shift (graveyard, day, or evening shift) in the same section who is the senior man in the next lower classification until only the lowest classification in that section is left vacant, which vacancy shall be filled by assignment by the Company from the relief pool.

When there is a vacancy of seven days or less on any shift in any section of the Operating Department which is not the result of a vacation, and there is not a 21 Shift man available to fill the vacancy as outlined above, and there is not a man in the relief pool who can be used for replacement, the vacancy shall be filled by doubling a man in accordance with Sub-section 7 below.

5. In the event a temporary vacancy, not a vacation, exists for a period of more than 7 days but less than 30 days, the senior employee in the next lower classification in that section shall be temporarily promoted on the eighth day until only the lowest classification in that section is left vacant; and such temporary vacancy shall be filled by a pool man until the vacancy has existed for a period of 30 days, when it shall be posted for bidding and filled in accordance with the provisions of Section 7 above.

6. Any vacancy of thirty days or less in the lowest classification of any section of the Operating Department shall be filled as provided above by assignment of an employee from the relief pool. Such employee so assigned from the relief pool shall receive the regular rate of pay being received by him immediately prior to the assignment with the provision, however, that if such employee so assigned from the relief pool is assigned to fill a job higher than a Sr. Helper's classification in that particular section, such employee shall receive the rate of the job so temporarily filled by him, subject to Section 16 of this Article.

7. The following method shall be used for determining the employee to be used for working a double shift (this procedure does not cover employees of the Laboratory who are covered under Section 8, Sub-section 13):

First Step.

When an employee fails to report for duty as scheduled in any shift and a replacement can be secured from the relief pool, the employee in that section on that shift will, if upgrading is required, be upgraded to fill the vacancy.

Second Step.

If it is impossible for the foreman to secure a replacement from the relief pool, the employee who was not relieved shall be given the first opportunity of working the double shift.

Third Step.

If the employee not relieved does not desire to work the double shift, then the senior employee of the same classification on the combination of shifts in that section going off duty shall next be given the opportunity to work the double shift.

Fourth Step.

If there is no employee of the same classification on the combination of shifts in that section going off duty who wishes to work the double shift, then the senior employee in the next lower classification on the outgoing shift in that section will be given the opportunity to work the double shift.

Fifth Step.

When there is no employee on the combination of shifts in that section who desires to work the double shift as outlined in Step 4, the employee who did not receive relief will be required to work until a relief is called unless he has a legitimate excuse. If he has such excuse, the foreman will choose the employee going off shift who, in

his opinion, is least inconvenienced and require him to work until a relief is obtained. When there is no man in the relief pool available to relieve and it is necessary to call a man out for duty, the relief man for the employee who is absent or is going off shift shall be first called out. If he cannot be contacted, the oldest man within the classification of the absent employee who is off duty shall be called next and so on until a relief is found, provided that no man shall be allowed to work more than 16 hours in 24 consecutive hours. If no man is available within the same classification the next lower classification will then be called.

Doubling of an employee to work on a job of a lower classification will not be done except in cases of extreme emergency as determined by the foreman.

8. Any employee who has been off duty due to illness or injury will be required to give his supervisor 8 hours' notice of his intention to return to work or secure permission of the Company to return to work earlier.

Any employee who has been off on an unauthorized absence not due to illness or injury shall not be allowed to return to work without giving eight hours' notice of his intention to return to work.

9. In the event of a vacancy occurring during a shift after the shift change is completed, such as an employee having to go home due to illness, and there is not a 21 Shift man working extra or a relief pool man who can be used for replacement, the vacancy shall be filled by calling out the relief man for the employee who is absent. If this man is not available, the job will be filled in accordance with Step 5 of the doubling procedure.

10. In cases where an employee is not eligible for promotion to a higher classification in accordance with Article X, Section 16, and it is necessary to double a man, the employee who is not eligible for promotion will be considered as not available and doubling will be done in accordance with the procedure as though no one was available to fill the job.

11. When an employee who is temporarily working in a higher classification than his regular classification accepts the opportunity to work a double shift, his classification will revert to his regular classification at the end of his regular shift. Said employee who has doubled onto a shift may exercise his seniority to receive any temporary upgrading that occurs on that shift.

12. When a unit or piece of equipment is temporarily shut down and as a result there is no work for an employee on his regular assignment, such employee may be required to perform the duties of any other job of the same classification or lower classification within his section; and if such employee is absent from work during such temporary shutdown, the Company shall not be required to fill his job.

13. Procedure in Laboratory.

A relief tester, if available, will relieve on each vacancy in the chemical laboratory section and shall perform the duties and receive the wage rate of the classification warranted by his seniority. The relief tester will not be considered available, except for callouts, if he has already worked eight hours within the day or forty hours within the work week. If the relief tester is not available, the following procedure shall govern the selection of a qualified replacement:

(a) Two lists will be maintained by the Steward to determine the employee's eligibility for callouts. One list will be for chief testers and one for testers. In the event it is impossible for an employee to accept a callout because of his work schedule, the next employee in line on this list is to have the opportunity to fill the callout. Whenever a callout is accepted and more than four hours are worked, that employee's name shall be placed at the bottom of the callout list. When callout is possible but refused, that employee's name will be moved to the bottom of the list; however, no junior tester will be eligible for callout if there is a junior tester already on shift, or no two junior testers will be eligible for callout on any one shift.

(b) It is understood that no female employee will work a double shift except in case of emergency.

(c) The senior employee coming on shift will relieve the senior employee going off shift.

(d) In the event an employee's relief fails to report for duty as scheduled and has not given at least four hours' notice, the employee not receiving relief shall be given the first opportunity to work the double shift.

(e) If the employee not receiving relief does not desire to work the double shift, then the employee of the same classification with the most seniority who is scheduled to go off shift will be given the opportunity to work a double shift.

(f) If the employee with the most seniority does not desire to work the double, then the employee of the same classification or lower next in order of seniority who is scheduled to go off shift will be given the opportunity of working the double shift, and so on until a relief is found.

(g) If no employee scheduled to go off shift desires to work the double, then the employees going off shift will mutually agree as to which one of them shall work the double shift. If the employees cannot agree, then the supervisor will choose the employee going off shift who, in his opinion, is least inconvenienced, and require him to work the double shift until a replacement can be secured from the callout list.

(h) In the event an employee gives the supervisor at least four hours' notice that he will not report for duty as scheduled, the vacancy will then be filled by obtaining a relief worker by contacting the employee on top of the callout list. If the employee on top of the list cannot be contacted, or is not available, or refuses the callout, then the employee next in order will be contacted, and so forth until a relief worker is found.

(i) The above procedure shall be operated in the ammonia (including gas reform and water) and main (including nitric acid) laboratories independently of each

other and the steward in each laboratory shall maintain his particular callout list.

(j) When the chief tester in nitric acid or gas reform laboratory is absent, the vacancy will be filled by the senior tester in the applicable laboratory with the most seniority.

13. Each employee returning to the service of the Company from an authorized leave without pay, or from sick leave, shall resume his duties on the basis of uninterrupted service on the job from which he left. Each employee who has been advanced within the section because of the absence of such employee on leave shall be returned to the job and same numbered shift from which he was advanced by reason of such authorized leave. The employee who was filling the job in the lowest classification within the section because of the absence of such employee on leave shall be returned to the Company Relief Pool and retain his accrued seniority within that section as provided in Sub-section (c), Section 4, Article X.

Section 8A.

(Section seniority shall govern in any of the following:)

(a) Any time a new job is established within a section the employee with the most seniority within the classification of the new job will have a preference of normally working on that job. However, if a straight day job is established in any section the oldest employee within the section shall have the right to the job if he so desires regardless of the classification of the new job.

(b) Any time a shift within a classification becomes vacant the employee within that classification who is the oldest in seniority shall have his preference of said shift.

(c) Any time that it becomes necessary for an employee to be demoted to a lower classification, he shall be given an opportunity to pick his shift within the classification in accordance with his seniority.

(d) Any time an employee is displaced from his shift by an older employee, he in turn shall have the right to displace any other employee in accordance with his seniority.

(e) Any shift changes made in accordance with this section shall be made on the Monday following the determination of employees' choices and will be made without involving any overtime pay.

Section 9. Reduction of Forces.

Step 1.

When there is a reduction in the number of employees in any section within a department, section seniority will apply with respect to any demotion which results therefrom, and all employees to be transferred out of that section will be transferred to the applicable pool.

Step 2.

All layoffs will be made in reverse order of departmental seniority. The employee last employed in the department where the layoff occurs shall be the first person laid off in that department in the event there is a reduction in the number of employees therein.

Step 3.

A number of regular jobs in the department, equal to the number of men transferred to the pool by the operation of Step 1 and not laid off, shall be declared vacant, which jobs shall be those to which men with the least departmental seniority are assigned. Each job so declared vacant shall be posted for bid as provided in Section 7 of this Article X.

Only those employees assigned to those jobs, either permanently or temporarily, when those jobs are declared vacant, and the employees transferred to the pool by the operation of Step 1 above and not laid off, will be eligible to bid on those jobs.

Each employee occupying one of the jobs which is declared vacant and is posted for bid will be considered to have bid on each of the jobs posted.

The successful bidder in each case shall be determined on the basis of departmental seniority only.

Section 10. Eligibility for Seniority.

An employee shall be first entitled to seniority when he has been continuously employed for 45 days within the bargaining unit, his seniority dating from the date of the beginning of such employment.

The Company shall have the right to lay off or discharge, without cause, any employee who has not worked in the bargaining unit a sufficient length of time to be entitled to seniority, and such action on the part of the Company shall not be subject of a grievance on the part of the Union or the employee involved under any provision of this agreement.

Section 11. Status of Employees Laid Off.

The accrued seniority, both departmental and sectional, of an employee who has been laid off through no fault of his own shall continue to exist as of the date of his layoff for a period equal to his length of service, but in no event shall it be less than 180 days or more than two years from the date upon which he has been laid off.

Section 12. Seniority Lists.

Seniority lists shall be compiled and be kept at all times available to the Workmen's Committee, and Workmen's Committee shall also have access to daily time reports to verify disputed seniority lists and service records.

Section 13. Seniority—Outside Assignments.

(a) Any employee, after having established seniority under the provisions of this agreement, who is temporarily assigned to another job by the Company, outside of the bargaining unit, shall continue for not more than 90 days to accrue seniority on his regular job during such period of temporary assignment. If such employee does not return to the bargaining unit before the expiration of the 90-day period, he shall forfeit his rights to seniority within the bargaining unit unless his period of assignment out

side the bargaining unit is extended by mutual agreement of the company and the union.

Section 14. Discharges and Reemployments.

The last employee hired in any department shall be the first employee in that department to be laid off and the last employee in a department laid off shall, if he still has seniority, be the first employee re-hired in the department.

An employee who has worked in a department sufficiently long, to be entitled to seniority in that department and who was laid off through no fault of his own, has kept his current address on file with the Company and continues to be entitled to seniority under the terms of this contract, shall, subject to the provisions of the paragraph immediately preceding, be given first opportunity for reemployment.

If reemployment is available for any such person, the Company shall so notify him by letter (with copy of such letter to Chairman of Workmen's Committee), addressed to him at his address then on file with the Company, and he shall be allowed seven days from the date upon which said letter was mailed or until he no longer retains his accrued seniority as provided in Section 11 of this Article X, whichever is the shorter period, in which to notify the Company in writing of his desire to return to work. In the event he delivers such notice, he shall be allowed seven days from the date of the delivery thereof to report for work; provided, however, if the employee involved is, on the date which he would otherwise be required to report for work, totally disabled to work, he shall, on or before that date, deliver to said Company a statement in writing from a licensed physician stating that he is so disabled, in which event the period within which he shall be permitted to return to work shall be extended 90 days.

Section 15. Job Posting Procedure.

All jobs posted for bid in accordance with the provisions of Section 7 of this Article X shall be filled in accordance with the following procedure:

(a) The Company shall post promptly and keep posted for fifteen (15) days notice on appropriate bulletin board of any vacancy. It shall be the duty of any employee, who feels himself entitled to such job on account of his seniority, to file his signed bid in the manner hereinafter stated.

(b) In order to be considered valid, a bid must be signed, enclosed in a sealed envelope, the original must be deposited in locked box marked "CIO Bids for Company" and the duplicate must be deposited in locked box marked "CIO Workmen's Committee". Each of said boxes will be provided at or near the main entrance gate to the operating area.

Section 16.

Notwithstanding any other provision of this Article X, it is now agreed that,

(a) An employee regularly assigned to the lowest classification in any section shall not be eligible for promotion to a higher classification in that section, either temporarily or permanently, until he has worked for at least 10 days in that section. An employee shall not be eligible for promotion to the Senior Operator classification until he has completed three months' service in that section.

(b) No employee from the Relief Pool, temporarily assigned to a job in a section, shall be entitled to receive a temporary promotion in that section unless (i) he has worked in that section at least ten days within the period of 14 days immediately prior to the vacancy therein which is to be temporarily filled, or (ii) on said date has worked in that section an aggregate of 10 days within the six months immediately preceding said date.

ARTICLE XI

Physical Examinations

Section 1. Periodical Examinations

The Company may from time to time require all employees to have periodical physical examinations by a doctor selected by the Company. However, as long as an employee is physically fit such examination shall not be used as a cause for termination. Each employee shall receive his regular rate of pay for all time required for him to be examined at the request of the Company.

Section 2. In the case of an employee being absent from work due to illness or physical impairment, he may be required to present a certificate of physical fitness, signed by a licensed physician, before being readmitted to work. This rule, however, shall not limit the right of the Company to require physical examination by a physician in the Company's service in exceptional cases of constantly recurring absence from duty.

Section 3. Notwithstanding any of the provisions of Article II or Article III of this agreement, in case a dispute arises over the physical fitness of an employee to return to work or continue to work, a board of three (3) physicians shall be selected, one by the Company, one by the employee, and one selected by the two so named. The decision of the majority of this board shall be final and binding.

ARTICLE XII

Union Dues

Upon receipt of a signed authorization by an employee in the form provided herein, requesting deductions from his or her wages of his or her monthly Union dues, the Company agrees to honor such authorization according to its terms during the life of this agreement. The form of such individual authorization shall be as follows:

"You are hereby requested and authorized to deduct from wage due me and payable on the first regular pay

day of each month, the sum of $_____ being my monthly dues to Oil Workers International Union, C.I.O., Local 434, and you are hereby authorized and directed to pay the amount deducted to Local Union No. 434 for my account on or before the 15th day of the month following the calendar month for which said deductions are made."

ARTICLE XIII

Discharge

Section 1. An employee shall not be discharged, if physically and mentally capable of continuing his duties, on account of any accident unless the accident was caused by negligence, carelessness or malicious intent of the employee.

Section 2. The Company shall expect all of its employees to adhere to its rules and regulations.

ARTICLE XIV

Military Leave

Section 1. Leave of Absence.

An employee of the Company who is drafted for service in the Armed Forces of the United States under The Selective Service Act of 1948, is inducted into that service as a member of the Reserve, or of a National Guard Unit, or volunteer for such service, shall be granted a military leave of absence. A military leave of absence shall be granted when the employee receives his final orders to report for duty in the Armed Forces, after having taken any prior examination to determine whether or not he shall be inducted into military service. If after receiving a certificate of satisfactory service from the Armed Forces such an employee makes application for reemployment and is reemployed by the Company under the provisions of the Selective Service Act of 1948, he shall be entitled to all rights provided in that Act.

Section 2. Pay in Lieu of Vacation.

Each such employee who is entitled to a vacation under the vacation policy of the Company at the time he leaves to enter the Armed Forces who elects not to take the vacation, but to receive pay in lieu thereof shall, upon furnishing to the Company a certificate of his commanding officer establishing the fact that he had been inducted into the military service, be paid the amount of money he would have received had he taken his vacation just prior to the beginning of his military leave.

Section 3. Military Bonus.

Each such employee shall, upon receipt by the Company of a statement of his commanding officer, stating in writing that he has been inducted into the Armed Forces of the United States, receive a bonus equivalent to one month's pay at straight time rate, based on his regular rate and normal schedule of hours, at the time he begins his military leave.

Section 4. Group Insurance Benefits.

(a) The Group Life Insurance of the employee on military leave will continue for two months from the date of the beginning of the leave with the cost of such insurance borne by the Company. All other Group Insurance Benefits of the employee terminate with the commencement of his leave, however, an arrangement will be made for him to again participate without a waiting period upon his return from the service and reemployment by the Company.

(b) The Hospitalization and Surgical Benefits for the dependents of each such employee shall be continued at the expense of the Company while the employee is in military service.

Section 5. Group Annuity Plan.

The contribution of each employee granted military leave shall be suspended at the time he leaves the Company to enter the military services of the United States and they will stand to his credit until his return. All rights under

the Company's Annuity Plan shall be suspended upon his entering the military service and an arrangement will be made for him to again participate without a waiting period upon his return from the service and reemployment by the Company.

Section 6. The provisions of this Article XIV shall be given effect as of July 27, 1950.

ARTICLE XV

Bulletin Boards

The Company shall cause a bulletin board to be placed on the property where it may be seen by employees entering and leaving their place of employment.

Such bulletin board may be used by the Workmen's Committee of the Oil Workers International Union for any matters pertaining to its membership provided the material posted shall contain nothing of a political or controversial nature nor reflect upon the Company or any of its employees or products.

This bulletin board will be locked with keys released to the Chairman of the Workmen's Committee, the Chief Steward, and the Chairman of the Lion Oil Group, of Local 434, of the Union and the Company.

ARTICLE XVI

Inspection of Equipment and Safety Hazards

Section 1. Inspection of all equipment throughout the plant or place of employment shall be continued by the Superintendent or other persons designated by the Company from time to time. An inspection of any equipment may be secured upon the recommendation of the Workmen's Committee or the workmen employed on such equipment. The Union Workmen's Committee may make written suggestions to the superintendent or his representatives as to the elimination of hazards in order to prevent accidents.

Section 2. No employee shall be required to perform services that seriously endanger his physical safety, and

his refusal to do such work shall not warrant or justify discharge. In all such cases an immediate conference between Company and Union shall be held to settle the issue in question.

ARTICLE XVII

Company—Union Conferences

The Union Workmen's Committee and the Company shall hold a regular meeting at least once each month. These meetings shall be held at 2:00 p. m. on the first Tuesday of each month. In the event the aforementioned day occurs on a holiday, the day following the holiday shall be the day of the meeting.

The Chairman of the Workmen's Committee when scheduled to work the graveyard shift on the day of any regular monthly meeting will be excused from work on the graveyard shift with pay.

ARTICLE XVIII

Severance Pay

Any employee covered by the terms of this agreement whose services are terminated through no fault of his own shall be granted severance pay after one year of continuous service of one week's pay, equivalent to forty hours' straight-time pay at his regular rate; after two years service, two weeks pay equivalent to eighty hours straight-time pay at his regular rate.

ARTICLE XIX

Contract Work

It is agreed that any work of operations as covered by this agreement will not be contracted out if the Company has men and equipment available for such work.

ARTICLE XX

Discrimination

There shall be no discrimination by the Company against any employee with respect to any conditions of employment on account of his membership in this labor union or on account of any activity undertaken in good faith in his capacity as a representative of other employees. The Union shall not discriminate against any employee who is not a member of the Union.

ARTICLE XXI

Leave of Absence

Section 1. Personal Business.

If an employee desires to be off on personal business (not emergencies), he may do so with written consent of the Company signed by the Plant Manager or Plant Superintendent so long as he does not desire to be off work over two work weeks and provided that he gives the Company forty-eight hours' notice of his desire to be absent and the length of time he desires to be off. Upon completion of such leave he will resume employment on the basis of uninterrupted service. The provisions of this Section 1 shall not be extended to more than two employees in each section at any one time.

Section 2. Union Business.

(a) The Company shall grant a leave of absence, without pay, extending not longer than 30 days to employees in order to engage in any work pertaining to the business of the Union, local or otherwise, upon sufficient notice so that the employee's absence will not cause overtime employment. Upon completion of such leave that employee will resume employment on the basis of uninterrupted service. This privilege will not be extended to more than four employees at any one time. This privilege will not be extended to any one employee for more than an aggregate of 60 days in any one calendar year.

(b) Notwithstanding the provisions of the foregoing subdivision (a) the Company agrees that upon written request of the President of Oil Workers International Union addressed to the Company to that effect, one employee will be given a leave of absence not to exceed one year, without pay, to work as an employee of the Union, or any of its affiliates, with the provision, however, that such leave of absence shall, upon the written request of the President of Oil Workers International Union addressed to the Company to that effect, be extended for a period of time not to exceed one additional year.

It is provided, however, that not more than one employee at a time may be on leave of the character mentioned in the paragraph immediately preceding.

No employee shall be granted a leave of absence pursuant to this subsection who has not, immediately preceding the date upon which such leave of absence is to begin, worked for a period of one year continuously.

Upon completion of the leave of absence mentioned within this subsection, or upon completion of the extended term of such leave of absence, if the term thereof is extended pursuant to this sub-section, the employee involved will resume employment on the basis of uninterrupted service; provided such employee reports to the Company for work within one day following the expiration of said leave of absence, or within one day following the extended term of such leave of absence if the term thereof is extended pursuant to this sub-section. An employee who fails to report for work within one day following the end of such leave of absence shall thereby forfeit all of his seniority and his services with the Company shall be terminated provided, however, if the employee involved is, on the date which he would otherwise be required to report to work, totally disabled to work, he shall, on or before that date, deliver to the Company a statement in writing from a licensed physician stating that he is so disabled, in which event the period within which he shall be permitted to return to work shall be extended 30 days.

Section 3. Sickness or Accident.

If an employee who has established seniority is out of service due to occupational injury or occupational disease suffered or contracted while he is in the employ of the Company, he shall retain his seniority accrued at the date of his disability and continue to accrue seniority during the period of his disability as a result thereof, notwithstanding any provisions of Article X. If an employee who has established seniority is out of service due to non-occupational injury or disease suffered while he was in the employ of the Company, he shall retain his accrued seniority for a period of five (5) years and will accrue seniority in the department in which he was last regularly employed for a period of one year.

Under either of the above conditions, if an employee should accept an equal or better job elsewhere, his seniority shall be cancelled.

ARTICLE XXII

Jury Duty

Each employee of the Company who is called for service upon any grand jury or petit jury shall be paid by the Company for each day which he serves upon said jury a sum equal to the amount which he would have earned if he had worked for the Company on that day for the number of hours of his regular work schedule at straight time, with the provision that no such payment shall be made to an employee for jury service on any day during which in accordance with his regular work schedule he would not have worked for the Company.

ARTICLE XXIII

Wages and Classifications

The hourly wages, set forth in Exhibit "B," hereto, to be paid to each employee in each classification shown on said exhibit shall remain in effect, without change from 7 a. m. April 29, 1950, to 7 a. m. April 29, 1951. The classi-

fications shown on said exhibit shall also remain unchanged during that period.

Notwithstanding any other provision of this agreement to the contrary, the question of wages to be paid shall not be the subject of arbitration. "Wages" as used in this Article shall be construed to include any allowance which results in an increase in the compensation of an employee, or of employees, as set forth in Exhibit "B".

ARTICLE XXIV

Validity

If any court shall hold any part of this agreement invalid, such decision shall not invalidate the entire agreement.

ARTICLE XXV

Privileges

Any privilege or benefit not herein mentioned and now being enjoyed by employees in the bargaining unit shall continue in accordance with the policy of the Company now existing with respect thereto.

ARTICLE XXVI

Any notice required to be given an employee under Article IV, Section 3, may be given by posting a notice on the bulletin board of the Union with a copy of said notice to the Chairman of the Workmen's Committee. If any employee named in such notice is on vacation or on leave of absence, a copy of said notice will be mailed in a sealed envelope, registered, and addressed to him at his address as shown on the records of the Company. Each employee named in any such notice shall be deemed to have received the notice at the time said notice is posted on the bulletin board or mailed to him at his home address.

Any notice to the Company provided herein may be given by depositing same in the U. S. mail in a sealed envelope, registered, postage prepaid, and addressed to Lion

Oil Company, Lion Oil Building, El Dorado, Arkansas, Attention: T. M. Martin, President.

Any notice to be given to the Union may be given by depositing the same in the U. S. mail in a sealed envelope, registered, postage prepaid and addressed to the Oil Workers International Union, C. I. O., 302 Trimble Building, El Dorado, Arkansas, with a copy of the notice to the Secretary, Local 434, Oil Workers International Union, 302 Trimble Building, El Dorado, Arkansas.

ARTICLE XXVII

During the term of this agreement, each person in the bargaining unit shall be allowed a leave with pay of one day to attend the funeral of his or her father, mother, husband or wife, grandparents, father-in-law, mother-in-law, brother, sister, brother-in-law or sister-in-law, half brother, half sister, or child.

ARTICLE XXVIII

During the term of this agreement, the Company shall maintain in effect an amendment to its sickness benefit plan which was in effect as of 7 a. m. April 29, 1950, which amendment shall be to the following effect:

If an employee is totally disabled to work, for a period of 7 successive full calendar days, was eligible for benefits under the sickness benefit plan at the time such disability began, and furnishes proof of such illness and the length thereof, he shall, as of the first full calendar day of such disability, be entitled to the applicable benefits set forth in the schedule of benefits on page 8 of said sickness benefit plan as published by the Company in its pamphlet with respect thereto, dated July 1, 1945. A calendar day shall for this purpose begin at 11 p. m. and end at 11 p. m., provided that if on his first day of illness the employee has lost a full day of work, the first day will be considered a calendar day even if it is not such in fact.

ARTICLE XXIX

The Company will procure and maintain in effect during the term of this agreement, for each employee in the bargaining unit who is from time to time participating in and continues to participate in the Company's plan for such insurance for employees in that unit, a policy of insurance with Metropolitan Life Insurance Company providing allowances to that employee with respect to the confinement of a dependent of that employee in a hospital as a result of illness, with limits of $5.00 per day for hospital room up to 31 days, surgical fees up to a maximum of $150.00, and miscellaneous hospital expenses up to $50.00, all in connection with any one separate illness of the dependent. A "dependent" within the meaning of this Article shall be a dependent as defined by said insurance company in the regular form of policy issued by it in such cases.

The Company will use its best efforts to cause said insurance company to make said policy effective on June 1, 1950. The Company shall pay the entire cost of providing the insurance hereinbefore specifically mentioned in this Article.

If within 90 days of the date of this agreement 75% of all employees then employed in the bargaining unit desire to increase their benefits under their group insurance hereinbefore mentioned to a limit of $6.00 per day for hospital room up to 31 days, up to $175.00 for surgical fees, and up to $60.00 for other hospital expenses, with respect to any one illness of an employee which results in his confinement in a hospital, the Company will arrange for the insurance with respect to the dependents of each employee as hereinbefore mentioned to be increased to similar amounts of benefits.

The Company shall pay the full cost of such increased insurance for the dependents of an employee, and the employee shall pay the full cost of the increase in such insurance for himself.

IN WITNESS WHEREOF, this instrument is executed on the 29th day of April, 1950 to be effective as of the 29th day of April 1950, at 7 a. m.

Lion Oil Company
by R. E. Meinert
Vice President

Approved:

J. B. Rogerson
Manager of Manufacturing

Oil Workers International Union C. I. O.
by W. M. Akin

Approved:

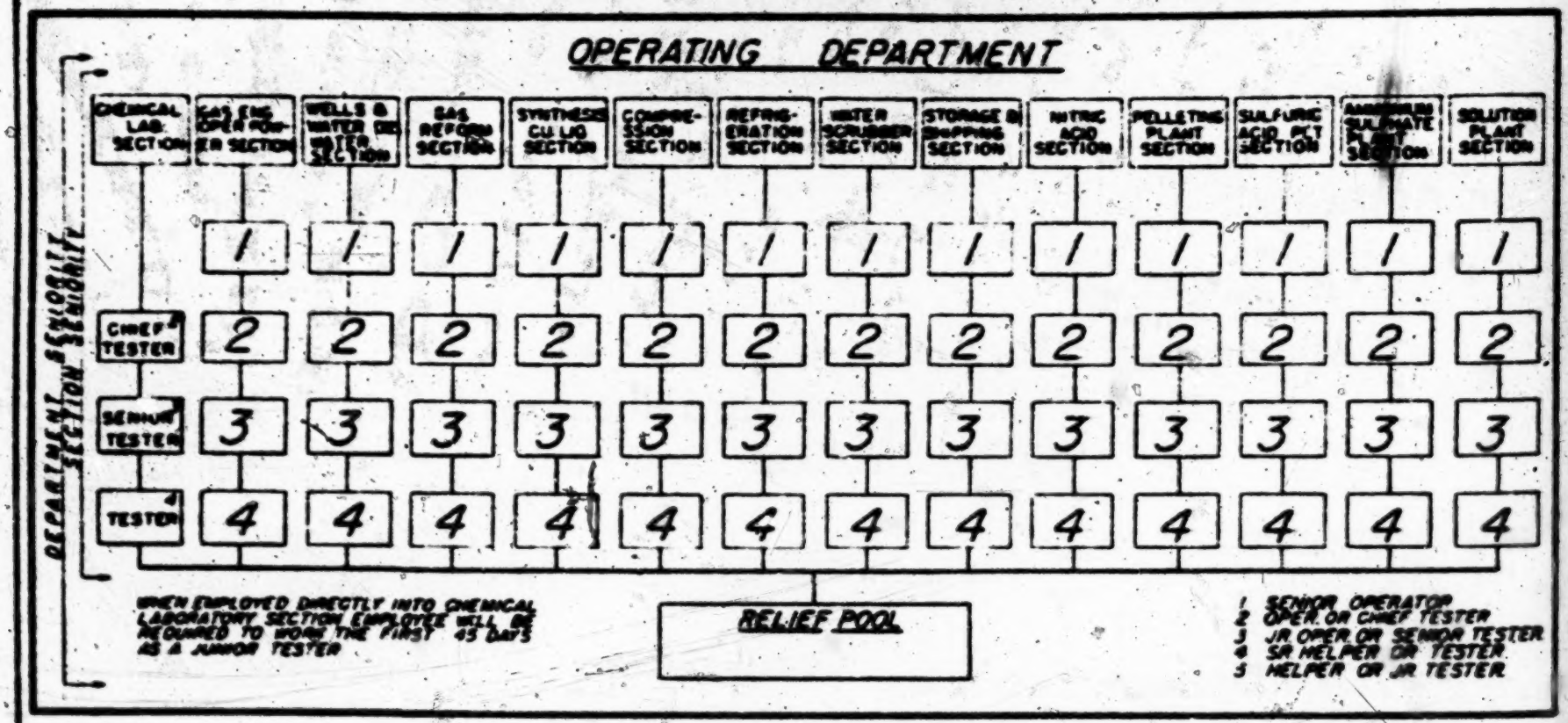
E. P. Shelton
T. H. DeLone
W. O. Cheatham
W. J. Whitworth
J. H. Young
Workmen's Committee

General Counsel's Exhibit No. 3

LION OIL COMPANY CHEMICAL DIVISION PROMOTION CHART (EXHIBIT "E")

FOR

BARGAINING UNIT REPRESENTED BY OWIU—CIO



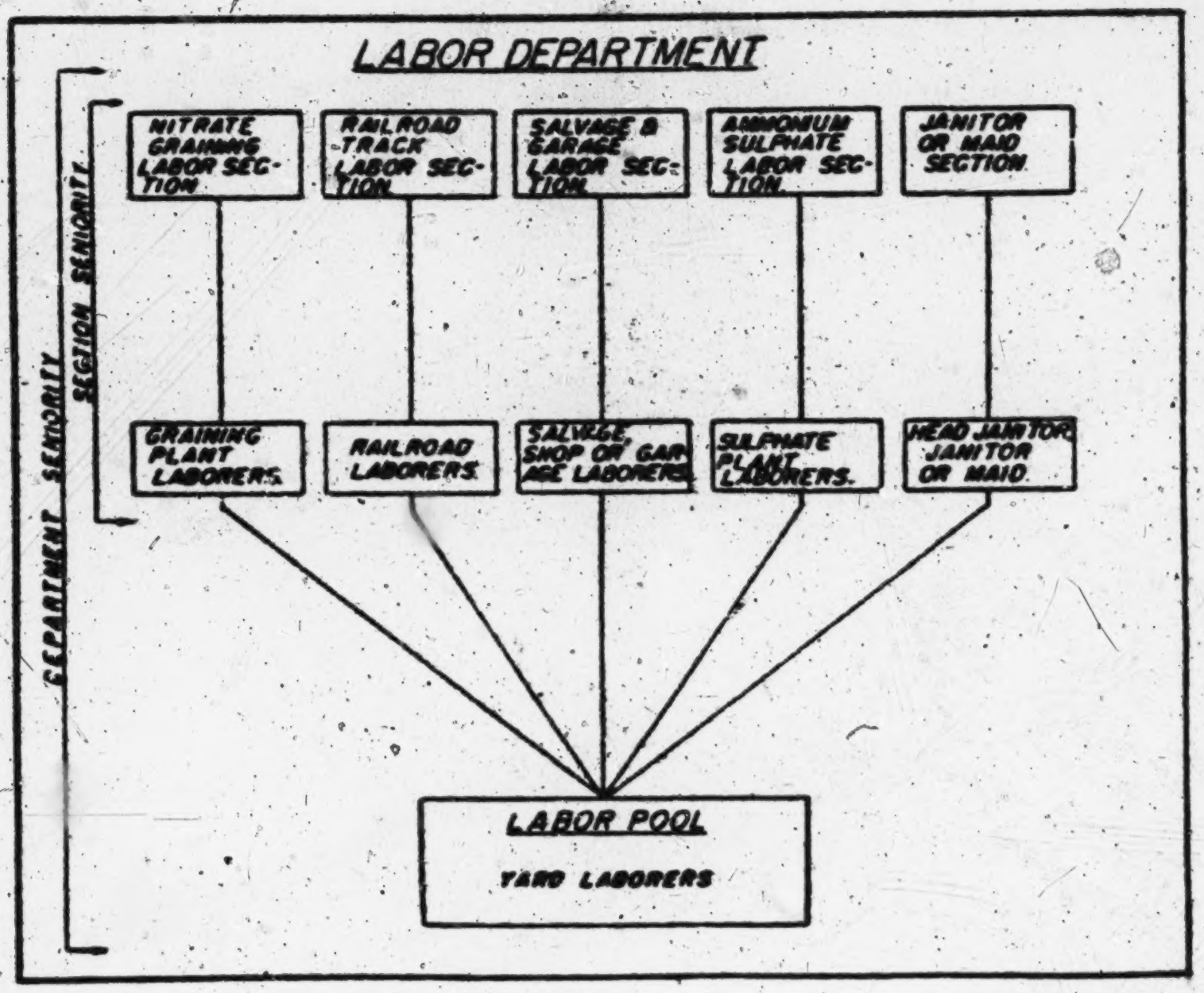

LABOR DEPARTMENT
DEPARTMENT SENIORITY
SECTION SENIORITY
NITRATE GRAINING LABOR SECTION
RAILROAD TRACK LABOR SECTION
SALVAGE & GARAGE LABOR SECTION
AMMONIUM SULPHATE LABOR SECTION
JANITOR OR MAID SECTION
GRAINING PLANT LABORERS
RAILROAD LABORERS
SALVAGE, SHOP OR GARAGE LABORERS
SULPHATE PLANT LABORERS
HEAD JANITOR, JANITOR OR MAID
LABOR POOL
YARD LABORERS

EXHIBIT "B."

(as amended)

WAGE RATES AND CLASSIFICATIONS

CLASSIFICATION	HOURLY RATE
Senior Operator	$2.14
Operator	2.00
Junior Operator	1.87
Sr. Helper (over one year in bargaining unit)	1.74
Sr. Helper (46 days to one year in bargaining unit)	1.66
Helper (first 45 days)	1.32
Chief Tester	2.00
Sr. Tester (after 90 days as tester)	1.87
Tester (after 45 days in Operating Department)	1.66
Jr. Tester (first 45 days in Operating Department)	1.32
Nitrate Graining Laborer	1.45
Sulphate Plant Laborer	1.45
Railroad laborer	1.38
Salvage Laborer	1.38
Garage Laborer	1.38
Head Janitor	1.38
Janitor (after one year in bargaining unit)	1.28
Janitor (after 6 months in bargaining unit)	1.25
Janitor (first 6 months in bargaining unit)	1.10
Maid (after one year in bargaining unit)	1.28
Maid (after 6 months in bargaining unit)	1.25
Maid (first 6 months in bargaining unit)	1.10
Yard Laborer Operating Air Tool	1.38
Yard Laborer (after one year in bargaining unit)	1.28
Yard Laborer (after 6 months in bargaining unit)	1.25
Yard Laborer (first 6 months in bargaining unit)	1.10

Note: The hourly wage rate applicable to each classification, as said rate is listed in the foregoing tabulation

of Wage Rates and Classifications, includes a sum which has been included therein in lieu of the Shift Change Allowance which has heretofore been in effect.

Shift Differential

In addition to the foregoing hourly rates, there shall be paid a shift differential of four (4) cents for each hour worked on an evening shift and six (6) cents for each hour worked on a graveyard shift. For the purpose of this agreement the term "evening shift" shall mean the period beginning at 3:00 p. m., and ending at 11:00 p. m., and the term "graveyard shift" shall mean the period beginning at 11:00 p. m. and ending at 7:00 a. m. the following day.

Clothing Allowance

In addition to the foregoing hourly rates, there shall be paid a clothing allowance of 2¢ or 3¢ per hour for each hour worked by an employee who works in the jobs listed below:

Section	Job	Clothing Allowance Per Hour
Storage and Shipping Solutions	Nitrate Rack	2¢
	Neutralizer Operator	2¢
	Correction Operator and Helper; Solutions Sr. Operator, Operator, Jr. Operator and Helper	2¢
Ammonium Sulfate	Bagging Crew	2¢
	Senior Operator	3¢
	Dryer Operator	3¢
	Centrifuge Operator	3¢
	Sulfate Helper	3¢
	Laborer	2¢
	Silo Jr. Operator	2¢
	Floor Laborer	3¢

Sulfuric	Junior Operator	3¢
Acid	Senior Operator	3¢
Nitric Acid	Senior Operator	2¢
No. 1	Panel Operator	2¢
	Boiler Operator	2¢
	Junior Operator	3¢
No. 2	Senior Operator	2¢
	Operator	2¢
	Helper	2¢
Pelleting	Air Scrubber Solution	
Plant	Operator	3¢
	Bagging Crew	2¢
	Drying Section, Senior Operator and Jr. Operator	3¢
	Concentrator Operator	2¢
	Neutralizer Operator	2¢
	2nd Floor Operator	2¢
	2nd Floor Laborer	2¢
	Shot Tower Helper	2¢
	Graining Plant Laborer, Shot Tower	3¢
	Clean Up Labor on Main Floor	3¢
	All Other Laborers	2¢
	Yard Laborer—Regular Trash Pickup Crew serving the following sections: Storage and Shipping, Solutions, Ammonium Sulfate, Sulfuric Acid, Nitric Acid No. 1, Nitric Acid No. 2, and Pelleting Plant	2¢

Each person who, at 11:00 p. m. October 22, 1950, was employed as a "helper (first 45 days)", "Jr. tester (first 45 days in Operating Department)", "Janitor (first 6 mos. in Bargaining Unit)", "maid (first 6 mos. in Bargaining Unit)" or "yard laborer (first 6 mos. in Bargaining Unit)" shall be paid, while working in such classification 10¢ an hour in addition to the hourly wage rate in the foregoing schedule applicable to that classification.

The wage rates provided in this Exhibit B shall be given effect as of 11:00 p. m. October 22, 1950.

In addition, each person who was employed by the company in the bargaining unit at 7 A. M., April 29, 1950, and is subsequently, during the term of this Agreement, employed in any one of the following classifications:

Sr. Helper (46 days to one year in Bargaining Unit)
Tester (After 45 days in Operating Department)
Janitor (First six months in Bargaining Unit)
Maid (First six months in Bargaining Unit)

Yard Laborer (First six months in Bargaining Unit) shall be paid on the basis of the hourly rate for that classification above set forth in this Exhibit "B" plus eight cents (8¢). Each such person who works during the term of this contract as a:

Janitor (After six months in Bargaining Unit)
Maid (After six months in Bargaining Unit), or

Yard Laborer (After six months in Bargaining Unit) shall be paid on the basis of the hourly rate for that classification set forth above in this Exhibit "B" plus three cents (3¢).

Clothing Allowance

(Amendment)

Yard Laborer who, on temporary assignment for work at the Pelleting Plant, works for eight (8) continuous hours or more at said Pelleting Plant ..... 2¢

LION OIL COMPANY

CHEMICAL DIVISION

DRAFT SCHEDULE FOR YEAR 1960

Exhibit "C-1"

JANUARY | FEBRUARY | MARCH | APRIL | MAY | JUNE | JULY | AUGUST | SEPTEMBER | OCTOBER | NOVEMBER | DECEMBER

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
7 - 3 SHIFT	2 3 3 3 3 3 3 8 8 8 8 8 8 8 10 10 12 12 12 12 11 14 14 16 16 16 16 16 16 16 16 19 19 19 19	3 3 3 1 11 1 1 6 6 6 5 5 5 5 11 11 11 11 11 9 9 16 15 15 15 15 15 13 19 19 20 20 20 20 20	1 1 21 4 4 4 4 5 5 5 21 7 7 7 9 9 9 9 21 10 10 13 13 13 13 13 21 14 20 17 17 17 17 17 21	4 4 2 2 2 2 2 7 7 7 8 8 8 8 10 10 10 10 12 12 12 14 14 14 14 14 16 16 21 18 18 18 18 18 19	2 3 3 3 3 3 1 8 8 6 6 6 6 6 12 12 12 11 11 11 11 16 16 16 16 15 15 15 19 19 19 19 19 20 20	1 1 1 1 1 21 4 6 5 5 6 6 5 21 11 9 9 9 9 9 9 15 16 15 13 13 13 13 20 20 20 20 17 17 17	4 4 4 4 4 2 2 21 7 7 7 7 7 8 9 21 10 10 10 10 10 13 13 21 14 14 14 14 17 17 17 21 18 18 18	2 2 2 2 2 2 2 8 8 8 8 8 8 8 11 11 11 11 11 11 11 15 15 15 15 15 15 15 20 20 20 20 20 20 20	1 1 1 1 1 21 4 6 5 5 6 6 5 21 11 9 9 9 9 9 9 15 16 15 13 13 13 13 20 20 20 20 17 17 17	4 4 4 4 4 2 2 21 7 7 7 7 7 8 9 21 10 10 10 10 10 13 13 21 14 14 14 14 17 17 17 21 18 18 18	3 3 1 1 1 1 1 6 6 5 5 5 5 5 11 11 11 11 9 9 9 15 15 15 15 15 13 13 20 20 20 20 20 20 17	2 2 2 2 2 2 2 8 8 8 8 8 8 8 12 12 12 12 12 11 11 16 16 16 16 16 16 15 19 19 19 19 19 19 19
DAYS OFF	4 7 10 10 14 14 18 18	2 2 6 6 12 12 16 16 19 19	3 3 6 6 11 11 15 15	1 1 5 5 9 9 13 13 17 17 20 20	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15	1 1 5 5 9 9 13 13 17 17 20 20	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15	1 1 5 5 9 9 13 13 17 17 20 20
SHIFT 3 - 11	3 3 1 1 1 1 1 6 6 6 5 5 5 5 11 11 11 11 9 9 9 15 15 15 15 15 13 13 19 20 20 20 20 20 17	1 21 4 4 4 4 4 5 5 21 7 7 7 7 9 9 9 21 10 10 10 13 13 13 13 21 14 14 17 17 17 17 17 21 18	4 2 2 2 2 2 3 7 7 8 8 8 8 8 10 10 10 12 12 12 12 14 14 14 14 16 16 16 18 18 18 18 18 19 19	3 3 3 3 3 1 1 8 8 6 6 6 6 5 12 12 11 11 11 11 11 16 16 15 15 15 15 15 19 19 19 19 20 20 20	1 1 1 1 21 4 4 5 5 5 5 21 7 7 11 9 9 9 9 9 9 15 15 13 13 13 13 13 20 20 17 17 17 17 17	4 4 4 4 2 2 2 7 7 7 7 7 8 8 10 10 10 10 10 10 12 14 14 14 14 14 14 14 17 17 21 18 18 18 18	2 2 2 2 2 3 3 8 8 8 8 8 8 8 12 12 12 12 12 11 11 16 16 16 16 16 16 15 19 19 19 19 19 19 19	3 3 1 1 1 1 1 6 6 6 5 5 5 5 11 11 11 11 9 9 9 15 15 15 15 15 13 13 20 20 20 20 17 17 17	1 1 1 1 21 4 4 5 5 5 5 21 7 7 9 9 9 9 9 9 9 13 13 13 13 13 13 13 17 17 17 17 17 17 17	4 4 4 4 2 2 2 7 7 7 7 7 8 8 10 10 10 10 10 10 12 14 14 14 14 14 14 14 17 17 21 18 18 18 18	2 2 2 3 3 3 3 8 8 8 8 8 6 6 12 12 12 12 12 11 11 16 16 16 16 16 16 15 19 19 19 19 19 19 19	2 2 2 2 2 2 2 8 8 8 8 8 8 8 12 12 12 12 12 11 11 16 16 16 16 16 16 15 19 19 19 19 19 19 19
DAYS OFF	3 3 6 6 12 11 11 16 16 19 19	1 1 5 5 9 9 13 13 17 17	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15 20 20	1 1 5 5 9 9 13 13 17 17	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15 20 20	1 1 5 5 9 9 13 13 17 17	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19
SHIFT 11 - 7	21 4 4 4 4 4 2 6 21 7 7 7 7 7 9 9 21 10 10 10 10 13 13 13 21 14 14 14 17 17 17 17 21 18 18	2 2 2 2 2 3 3 7 8 8 8 8 8 8 10 10 12 12 12 12 12 14 14 14 16 16 16 16 18 18 18 18 19 19 19	3 3 3 3 1 1 1 6 6 6 6 6 5 5 11 11 11 11 11 9 9 15 15 15 15 15 15 15 19 19 19 20 20 20 20	1 1 1 21 4 4 4 5 5 5 5 21 7 7 9 9 9 9 9 21 10 13 13 13 13 13 13 21 20 20 17 17 17 17 17	4 4 4 2 2 2 2 7 7 7 7 8 8 8 10 10 10 10 10 12 12 14 14 14 14 14 14 16 17 21 18 18 18 18 18	2 2 3 3 3 3 3 8 8 8 8 6 6 6 12 12 12 12 11 11 11 16 16 16 16 16 15 15 18 19 19 19 19 19 20	3 1 1 1 1 1 21 6 6 5 5 5 5 5 11 11 11 9 9 9 9 15 15 15 15 13 13 13 20 20 20 17 17 17 17	1 1 1 1 1 21 4 5 5 5 6 6 5 21 11 9 9 9 9 9 9 15 16 15 13 13 13 13 20 20 20 20 17 17 17	4 4 4 4 4 2 2 21 7 7 7 7 7 8 9 21 10 10 10 10 10 13 13 21 14 14 14 14 17 17 17 21 18 18 18	3 3 1 1 1 1 1 6 6 5 5 5 5 5 11 11 11 9 9 9 9 15 15 15 15 13 13 13 20 20 20 20 17 17 17	2 2 2 3 3 3 3 8 8 8 8 8 6 6 12 12 12 12 11 11 11 16 16 16 16 16 15 15 19 19 19 19 19 19 20	2 2 2 2 2 2 2 8 8 8 8 8 8 8 12 12 12 12 12 11 11 16 16 16 16 16 16 15 19 19 19 19 19 19 19
DAYS OFF	1 1 5 5 9 9 13 13 17 17 20	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15 20 20	1 1 5 5 9 9 13 13 17 17	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15 20 20	1 1 5 5 9 9 13 13 17 17	4 4 7 7 10 10 14 14 18 18	2 2 8 8 12 12 16 16 19 19	3 3 6 6 11 11 15 15 20 20

General Counsel's Exhibit No. 3

General Counsel's Exhibit No. 3

72

SHIFT SCHEDULE FOR SR. OPERATOR

#21 SHIFT MAN IN WATER SECTION

Exhibit C. 2

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
8 - 4	X	X	X							X	X	X				X	X	X	X	X			X				X	X		X	X	X	X					X	X	X	X		
4 - 12								X	X												X	X																						
12 - 8	X	X																	X	X																								
Days Off					X	X		X					X		X	X					X	X				X	X					X	X				X	X					X	X

Exhibit C-3

SHIFT SCHEDULE FOR SR. OPERATOR

#21 SHIFT MAN IN POWER SECTION

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
8 - 4			X	X						X	X				X						X		X	X				X	X	X	X					
4 - 12								X	X	X										X	X	X													
12 - 8	X	X	X													X	X	X											X						
Days Off					X	X		X				X	X	X					X	X					X	X						X	X		

EXHIBIT "C-4"

SHIFT SCHEDULE — AMMONIA LOADER

8-4	M	T	W	T	F	S	S
	A	A	A	A	A	B	B
	B	B	B				
Days Off				B	B	A	A

SHIFT SCHEDULE FOR EMPLOYEES WORKING IN THE GAS REFORM AND NITRIC ACID LABORATORIES

EXHIBIT C-5

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
Gas	1	1	1	1	3	1	–	3	1	1	1	1	1	–	1	1	1	1	1	3	–
Reform																					
HNO_3	3	2	2	2	2	2	–	2	2	2	2	2	3	–	2	2	2	2	3	2	–
		3	3	3			–		3	3	3			–		3	3	3			–

WORK SCHEDULE FOR JANITORS IN OPERATING AREA

Exhibit C- 6

M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
	1	1	1	1	1		1	1	1	1	1			1	1	1	1	1			1	1	1	1	1			1	1	1	1	1		
2	2	2	2	2				2	2	2	2	2	2	2	2	2	2	2			2	2	2	2	2			2	2	2	2	2		
3	3	3	3	3			3	3	3	3	3				3	3	3	3	3	3	3	3	3	3	3			3	3	3	3	3		
4	4	4	4	4			4	4	4	4	4			4	4	4	4	4				4	4	4	4	4	4	4	4	4	4	4		
5	5	5	5	5			5	5	5	5	5			5	5	5	5	5			5	5	5	5	5			5	5	5	5	5		

General Counsel's Exhibit No. 3

WORK SCHEDULE FOR EMPLOYEES OF THE LABOR DEPARTMENT OTHER THAN JANITORS IN THE OPERATING AREA

EXHIBIT C-7

1. The janitor assigned to the Recreation Club will work on a two-week cycle; one week he will work Monday through Friday, the following week he will work Tuesday through Saturday. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

2. The janitor assigned to the Staff House will be on a two-week work schedule; one week he will work Monday through Friday, the following week he will work Tuesday through Saturday. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

3. The janitor assigned to the Change House will work a regular schedule of 10 days on 4 days off. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

4. The janitors who are working days in the Administrative Area will be divided into two groups. One group will work a regular schedule of Monday through Friday, the other group will work Tuesday through Saturday. Their normal work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

5. The maid shall work a regular schedule of Tuesday through Saturday, and her normal work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

6. The janitors assigned to the evening shift, who clean up the Administrative Area, will work a regular schedule of Monday through Friday, and their normal work day will be from 4:00 p. m. until 12:00 midnight. These janitors will receive the 4¢ per hour shift differential for this 4:00 p. m. to midnight shift.

7. Employees working in the Railroad Track Labor Section, Salvage and Garage Labor Section, and Labor Pool will normally work five consecutive eight-hour days, Monday through Friday, and will normally begin work at 8:00 a. m. and end at 4:30 p. m., with a thirty-minute lunch period from 12:00 noon to 12:30 p. m.

Exhibit C-8

SHIFT SCHEDULE FOR JR. OPERATOR

#21 SHIFT MAN IN POWER SECTION

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
8 - 4	X	X							X	X						X	X	X	X	X		X						X	X						X	X	X	X		X
4 - 12											X	X	X										X							X	X	X									
12 - 8		X	X	X																	X	X		X	X																	
Day Off					X	X		X						X	X						X					X	X						X	X						X	X

EXHIBIT C-9

WORK SCHEDULE FOR MISCELLANEOUS WORKERS IN THE LABORATORY SECTION

Employees in the Chemical Laboratory Section, who are assigned to the following jobs, will normally work five consecutive days, Monday through Friday. The male employees will work from 8 a. m. to 12 o'clock noon and from 12:30 p. m. to 4:30 p. m. The female employees will work from 8 a. m. to 12 o'clock noon and from 12:45 p. m. to 4:45 p. m.

Glass Blower
Standard Solutions
Day Tester in Main Laboratory
Water Laboratory Tester

EXHIBIT C 10

SHIFT SCHEDULE FOR DAY LABOR AT PELLETING PLANT

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
7-3 Shift	A	A	A			A	A	A	A	A	A			A	A	A	A	A				A	A	A	A	A			A	A	A	A	A			A	A	A	A	A		
	B			B	B	B	B	B	B			B	B		B	B	B			B	B	B	B	B			B	B	B	B	B			B	B	B	B	B			B	B
		X	X	X	X					X	X	X	X				X	X	X	X	X	X			X	X	X				X	X	X	X	X	X				X	X	X	
3-11 Shift									X																																		
11-7 Shift	X																X																										X
Days Off	B	B				A	A			B	B			A	A			B	B			A	A	A			A	A	A			B	B	B			A	A			B	B	
			X	X	X							X	X	X						X	X						X	X							X	X						X	X

(END)

General Counsel's Exhibit No. 4.

Copy

OIL WORKERS INTERNATIONAL UNION, C.I.O.
EL DORADO LOCAL No. 434
EL DORADO, ARKANSAS

August 24, 1951

REGISTERED MAIL
RETURN RECEIPT REQUESTED
SPECIAL DELIVERY

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas
Attention: Mr. T. M. Martin, President
Federal Mediation and Conciliation Service
14th and Constitution Avenue, N. W.
Washington 25, D. C.

Gentlemen:

Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bargaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act

of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

Oil Workers International Union, C.I.O.
By /s/ E. P. Shelton,
Chairman Workmen's Committee
Lion Oil Group Local 434-OWIU-CIO

UNION'S PROPOSALS

Article III

In the event a grievance arises over a discharge or a lay-off, the first and second step of the grievance procedure may be by-passed.

Saturdays, Sundays and holidays shall be excluded from all time limitations provided in the grievance procedure and arbitration. Provided that in the event either party violates any time limit provided in any step in the grievance procedure the other party shall win the grievance by default.

Add a new section to the effect that in the event any employee who is called before Management for disciplinary purposes shall be permitted to have three union members present at such conference.

Step 5—Paragraph Five

Amend Paragraph Five of Step 5 of Article III so it provides that the loser will pay all of the expenses of the third member of the Arbitration Board. In the event of a split or divided decision, the Arbitration Board shall determine the amount of the cost of the third member of the Arbitration Board that will be borne by each party.

Article IV

Section 1 An employee who is temporarily required to perform, for as much as one hour, work of a classification with respect to which the rate of pay is greater * * *.

Section 4 Add the following to this section. No operating employee shall be required to do any work where it is necessary to use any shovels, picks, axe or similar tool.

Article VI

Section 1 Provide for four (4) hours minimum pay in the event of call out.

Section 1 Amend to provide that if a pool man is not found within thirty (30) minutes and an employee is being held over with instructions to double that he shall be entitled to double if he so desires even if the pool man is secured at a later hour after the first thirty (30) minutes has passed.

Section IV Add a new sentence as follows:

If the cafeteria is closed the Company will at its expense furnish the employee with an appropriate lunch. The lunch shall be delivered within two hours after the overtime commences.

Article VIII—Holiday Pay

Add: Washington's Birthday—Col. Barton's Birthday.

Amend second paragraph to provide that two and one-half times the regular rate shall be paid for work performed on any holiday.

Article IX—Vacations

Amend to provide for three weeks vacation after five (5) years of seniority.

Provide that an employee may, upon request, get his vacation check on the Friday prior to the beginning of the vacation.

Delete Section 4.

Article X

Amend to provide for plant seniority to be used in computing vacation time and sick leave.

Section 1. Seniority shall be adhered to in all jobs within a classification, shift, promotions, demotions and lay-off other than discharge for just cause.

Section 6. Amend so that an employee who has been demoted to the pool from any section shall be given preference with regard to temporary assignments to work in the section from which he was demoted in accordance with his seniority.

Section 9. Amend as follows:

The employee with the most departmental seniority shall have the right to displace any employee with less department seniority in any other section in the lowest classification only.

Section 8. Sub-section 13 (a) Add the following sentence—Nor shall there be two Jr. Testers on any one shift.

Section 8, Sub-Section 13 (i)

Delete the following—and the steward in each laboratory shall maintain his particular call out list.

Section 8. (b)

Amend to provide that in the event there are two vacancies on any one shift in the Synthesis Section that there will not be any double set ups that would take both operators off the copper liquor panel board at the same time.

Article XII—Union Dues

Amend second paragraph to read as follows:

"You are hereby requested and authorized to deduct from wages due me and payable on the first regular pay day of each month, the sum equal to my monthly dues as set by Oil Workers International Union-CIO, Local 434, and you are hereby authorized and directed to pay the amount deducted to Local Union No. 434 for my account on or before the 15th

day of the month following the calendar month for which said deductions are made."

Add the following as a new section:

The Company upon proper signed authorization will deduct from an employee's wages, one dollar ($1) per year payable to OWIU-CIO, Local 434 as a P.A.C. contribution.

Article XVII—Paragraph Two

Amend to provide that each member of the Workmen's Committee who is working graveyard shift will be allowed time off with pay to attend any meetings with Management.

Add a new paragraph to provide that Company will pay for time lost by member of the Workmen's Committee and Union witness in arbitration cases arising under this contract.

Article XVIII—Severance Pay

Any employee covered by the terms of this agreement who is laid off through no fault of his own, or retired, shall be granted severance pay after one year of continuous service of one weeks' pay, equivalent to forty (40) hours straight time pay at his regular rate; after two years service, two weeks' pay equivalent to eighty (80) hours straight time pay at his regular rate.

Article XXI—Public Service Leave

Add a new section to provide for leave of absence for any employee who is elected or appointed to any public office.

Article XXII—Jury Duty

Amend to include coroner jury.

Amend to provide that an employee who is duly subpoenaed to appear in any court will be paid in the same manner as if he was on jury duty.

Article XXIII—Wages and Classifications

Amend Exhibit "B" to provide that Helpers and Senior Helpers shall only be used in the Operating Pool. The regular assigned classifications in any operating section shall be Junior Operator, Operator, Senior Operator and Chief Operator. All present regularly assigned Junior Operators shall be upgraded to Operators. All regularly assigned Senior Helpers shall be upgraded to Junior Operator. A like set up shall be established in the Laboratory Sections.

Amend Exhibit "B"

1. Increase base rate up to 10% above May 1, 1950 level.

2. Add 5¢ per hour to new base rate as an improvement factor increase.

3. Adopt an escalator clause based on the CPI with a 1¢ per hour increase or decrease for each change of .9 in the CPI, with no reduction in base rate.

Article XXVII—Funeral Leave

Add grand-child to list of relative.

In the event of the death of an employee's father, mother, husband or wife, grandparents, father-in-law, mother-in-law, brother, sister, brother-in-law or sister-in-law, half brother, half sister, child, grandchild, grand parents-in-law, son-in-law or daughter-in-law, the employee shall be allowed three days funeral leave with pay. In the event the employee desires additional time off it will be allowed in such event but such additional time off shall be charged against his sick benefits. Provided further that in the event it is necessary for an employee to serve as an active pall bearer he will be paid his straight time rate not to exceed one day.

Article XXVIII—Sick Benefits

Amend to eliminate waiting period.

Article XXIX—Insurance

Amend insurance policy to include coverage for pregnancy.

Amend to include doctor bill insurance.

Shift Differential.

Amend to provide for 10¢ per hour on graveyard and 6¢ per hour on evening.

Clothing Allowance

Add the following to classification receiving 2¢ and 3¢ clothing allowance:

Garage Laborers
Acid Area Janitors
Oil Recovery Operators—All Grades
Water Treaters in Boiler House
All Laboratory Personnel
#9 Synthesis Sr. Operator
Synthesis Helpers

Upgrading of Classifications

Sulphate Section—Silo Jr. Operator to Operator
Boiler House—Jr. Operator to Operator
Solutions—Solution Operator to Sr. Operator
Reform—Sr. Helpers to Jr. Operators
Labs—Chief Testers to Sr. Operator rate
#2 Nitric Acid—Compressor Operator to Sr. Operator
Shipping & Storage—Nitrate Loading Operator to Sr. Operator and add one Helper per shift.
Main Lab—Add one Chief Tester per shift
Graining Plant—Bagging Operator to Sr. Operator and add one Helper per shift.
Sulfuric Acid—Jr. Operator to Operator
Synthesis—Copper Liquor Operators to Sr. Operator

Savings Plan

It is the Union's desire to establish a savings plan.

A brief outline is attached.

Annuity Plan

It is the Union's desire to make certain modifications and amendments to the plan that the Company presently has in force. Copy is attached.

OWIU-CIO PENSIONS AND SAVINGS PLAN PROPOSALS FOR LION OIL COMPANY EMPLOYEES

PROPOSED AMENDMENTS TO PRESENT ANNUITY PLAN

Termination of Service and Vested Retirement Income Rights.

Group annuities purchased for a participant by his own and company contributions shall be fully vested in and belong to him subject only to the following:

If, after ceasing to be an employee, a person who has less than five (5) years service, elects to exercise his option under the group annuity contract to surrender for cash that portion of group annuity derived from his own contribution, he shall thereupon lose title to all group annuity purchased under this plan with company contributions.

(A participant with five (5) or more years of service may surrender for cash annuities purchased with his own money at any time after termination of employment, but contributions purchased by him with company funds will be carried to maturity and paid to him as an annuity.)

The Plans Future.

The plan shall remain in effect for a period of two (2) years and indefinitely thereafter, subject to the right of the Company or the Union to suspend or terminate the plan after the expiration of the two year period.

In the event the plan is suspended for more than one (1) year or terminated, each participant shall

have the same vesting rights as an employee who is terminated.

Sixty (60) Months Certain Feature.

Amend plan to provide all group annuity income purchased under the plan shall be payable from the annuity commencement date and shall continue for the remainder of the insured's lifetime with the guarantee that if he should die on or after his annuity commencement date, but before sixty (60) monthly annuity payments have been made, such annuity payments shall be continued to his beneficiary until sixty (60) payments in all have been made to the insured and his beneficiary.

Suspension of Contributions.

A participant may voluntarily suspend contributions at any time by written notice to the Company, whereupon he shall be ineligible to resume contributions for a period of six (6) months. In addition, contributions will be suspended automatically if he is absent from work for more than thirty (30) days and receives less than 50 per cent of his normal earnings. Such suspension will not affect his re-entry into the plan at any future date. During suspension an employee who does not withdraw his contributions will lose annuity credits only for the time that he is not participating in the plan.

Early Retirement on Account of Disability.

Amend to provide that upon application by a participant who is, on the basis of medical evidence, permanently and totally physically or mentally incapacitated for work with the Company, shall be retired. In such cases the retirement income credits then accrued to be paid at normal retirement date will be

actuarially reduced and paid as described elsewhere in the plan or the employee may elect to defer annuity payments to a later date but not later than his normal retirement date.

$65 Monthly Minimum Pension

Amend the pension plan to provide a minimum pension of $65 per month for any employee who retires on or after his normal retirement date and has participated in the plan for 10 or more years, or for any participant in the plan who may be retired or has been retired, at normal retirement date prior to September 1, 1953 after five (5) years of participation in the plan.

Contributions—Employee—Company

Amend to provide that the Annual rate of retirement income for future service, commencing at normal retirement date, will be computed as 1/2 of the employee's total contributions actually made during his future service period and each employee joining the plan will, subject to rules governing suspensions, contribute each month the amount indicated in the following schedule:

Earnings Class	Monthly Earnings	Employees Monthly Contributions	Employee Monthly Benefits for each Year of Contribution to the Plan	
			Present Plan	CIO Proposed
1	Under $125 (Employee's Age 21 to 34 last birthday)	$ 1.30	$ .50	$ .65
2	Under $125 (Employee's age 35 & over last birthday)	1.95	.75	.975
3	125 - 146.99	2.60	1.00	1.30
4	150 - 174.99	3.25	1.25	1.625
5	175 - 199.99	4.55	1.75	2.275
6	200 - 224.99	5.20	2.00	2.60
7	225 - 249.99	5.85	2.25	2.925
8	250 - 274.99	7.15	2.75	3.575
9	275 - 299.99	8.45	3.25	4.225
10	300 - 324.99	9.75	3.75	4.875
11	325 - 374.99	11.70	4.50	5.85
12	375 - 424.99	14.30	5.50	7.15
13	425 - 474.99	16.90	6.50	8.45
14	475 - 524.99	19.50	7.50	9.75
15	525 - 574.99	22.10	8.50	11.05
16	575 - 624.99	24.70	9.50	12.35

(Increase by multiples of $50) (Increase by Multiples of $2.60) (Increase by Multiples of 1.00 1.30)

BRIEF SUMMARY OF OWIU-CIO PENSION PROPOSALS FOR LION OIL COMPANY EMPLOYEES INDICATING THE ESTIMATED PENSION FOR SELECTED WAGE AND LENGTH OF PARTICIPATION GROUP — ALSO INDICATING THE COMBINED S. S.* AND COMPANY PENSIONS.

(*based on H. R. 6000 now pending in Congress)

After Age 65 if You Retire With	Years Participation in Lion Plan Since Sept. 1, 1943	Monthly Wage	Social Security Now	Lion Plan Now	Total Pension Now	H. R. 6000	OWIU-LION Proposals	Total Then
Primary Benefit only	10 years	$200	$38	$20	$58	$63	$65	$128
with Wife 65 or over	10 years	200	58	20	78	94	65	159
Primary Benefit only	20 years	200	38	40	78	63	65	128
with Wife 65 or over	20 years	200	58	40	98	94	65	159
Primary Benefit only	30 years	200	38	60	98	63	78	141
with / Wife 65 or over	30 years	200	58	60	118	94	78	172
		$300 Per month Average Wage						
Primary Benefit only	10 years	$300	$44	$97.50	$81.50	$74	65	139
with Wife 65 or over	10 years	300	66	37.50	103.50	110	65	175
Primary Benefit only	20 years	300	44	75	119	74	97.50	171.50
with Wife 65 or over	20 years	300	66	75	141	110	97.50	207.50
Primary Benefit only	30 years	300	44	112.50	156.50	74	146.25	220.25
with Wife 65 or over	30 years	300	66	112.50	178.50	110	146.25	256.25

OWIU-CIO PROPOSED SAVINGS PLAN FOR LION OIL EMPLOYEES

The Union proposes that an employees savings plan be established on the basis set forth below:

1. Through voluntary pay roll deduction authorization an employee may contribute up to 5% of his earnings into a Savings Plan trust established to administer the fund. The Company will contribute an amount equal to the employee's contribution which will be credited to the employee's account.

2. Employees may voluntarily suspend contributions at any time, but may not resume contributions until after six months, during which time the Company's contribution would also be suspended.

3. The Trustee may invest the savings in U. S. Government Bonds, company stock, or other securities approved for trust investment purposes. Earnings on investments will be credited to the employee's savings account.

4. An employee may, once each year, withdraw up to 2/3 of his and the Company's contributions to his savings account.

5. An employee may borrow money from the savings account under rules to be established by the trustees, using his savings account credit balance or collateral and repaying through pay roll deductions.

6. An employee's savings fund account is paid to him in full when he retires, or when he leaves the company prior to retirement. If an employee dies before retirement his savings fund account will be paid in full to his beneficiary.

7. Annual statements showing each member how much he has accumulated both in contributions and earnings will be furnished each member.

8. Trustees selected from and by members of the Savings Plan shall administer the Savings Plan under rules adopted for that purpose.

The above merely sets forth some basic principles for a Savings Plan and is not intended to be a complete proposal from the Union.

General Counsel's Exhibit No. 8.

Copy

OIL WORKERS INTERNATIONAL UNION
C. I. O.

INTERNATIONAL REPRESENTATIVE
El Dorado, Arkansas

June 23, 1952

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas
Attention: Mr. Darrell Dickens

Gentlemen:

This letter is to serve as a written confirmation of our verbal offer to return to work all strikers at approximately 11:30 Saturday morning, June 21, during a collective bargaining conference in the Company's office at El Dorado, Arkansas. As we told you at that time this offer to return to work was unconditional and is a continuing offer.

It is my understanding the Company's position in this matter was that they would permit no one to return to work until a satisfactory new agreement has been reached.

The Company says it is mandatory that their proposals be included in the new agreement.

Yours very truly,

/s/ Robert F. Goss
Robert F. Goss, Representative

RFG:e

cc: Federal Mediation & Conciliation Service
Dallas, Texas

National Labor Relations Board
Fifteenth Region
New Orleans, Louisiana

Mr. Fred Schmidt, Director Dist. #3

Mr. Lindsey Walden, General Counsel
OWIU-CIO

General Counsel's Exhibit No. 9.

LION OIL COMPANY
El Dorado, Arkansas

June 23, 1952

Oil Workers International Union, C. I. O.
Trimble Building
El Dorado, Arkansas

Dear Sirs:

Since your Union called a strike on April 30, 1952, of persons then employed by Lion Oil Company at its Chemical Plant, representatives of your Union and representatives of our Company have attempted to reach an agreement in settlement of that strike, which will provide the conditions under which persons employed in the operating

and labor departments at the Plant will work for the Company during the term of the agreement reached. So far our negotiations have been unsuccessful.

In order that there might be no misunderstanding as to the last offer of the Company, made to your Union for settling the strike, made in our conference on last Saturday, June 21, 1952, we are writing this letter to state again that proposal. In order that each person represented by your Union in this matter may be informed as to the last offer of the Company hereinbefore mentioned, we are sending a copy of this letter to each of them.

The last offer of the Company, made on Saturday of last week, was as follows:

A contract would be entered into between the Company and your Union as representative of the persons mentioned in substantially the same form as the contract which was in effect between your Union and the Company at 11 p. m., April 30, 1952, amended as follows:

(1) The agreement would extend for the period beginning with the date of its execution and ending July 1, 1953.

(2) The agreement would provide that there shall be no strike, concerted work stoppage of any other character or lock-out prior to July 1, 1953.

(3) As to increases in wages and other benefits, the Company offered two proposals, either of which your Union could accept.

PROPOSAL A	PROPOSAL B
1. An increase in each basic hourly wage rate in effect on April 30, 1952, equal to 15¢ an hour.	1. An increase in each basic hourly wage rate in effect on April 30, 1952, equal to 13-1/2¢ an hour.
2. An increase in the shift differentials in effect on	2. An increase in the shift differentials in effect on

April 30, 1952, to 6¢ for the evening shift and 12¢ for the midnight shift.

3. A change in the pay in lieu of notice clause with respect to a temporary lay-off and in the provisions with respect to termination pay (which suggested changes we understand are acceptable to your Union).

4. Adding Washington's Birthday as the seventh holiday with pay.

5. Continuation, during the term of the agreement, of the insurance and annuity programs which were in effect on April 30, 1952.

April 30, 1952, to 6¢ for the evening shift and 10¢ for the midnight shift.

3. A change in the pay in lieu of notice clause with respect to a temporary lay-off and in the provisions with respect to termination pay (which suggested changes we understand are acceptable to your Union).

4. Liberalizations in the group insurance plan and retirement plan in effect as of April 30, 1952, the details of which liberalizations have been explained to your Union on various occasions.

5. Upgrading 50% of the Jr. Operators to Operators and reducing the classification of the remaining 50% to Sr. Helpers with no reduction in the pay of each individual demoted to Sr. Helper so long as he works as a Sr. Helper as a result of that demotion. The upgrading of one Sr. Tester per shift in the laboratory to the classification of Chief Tester.

The basic hourly wage rates offered in each of the two proposals are as follows:

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	Proposal A	Proposal B
Senior Operator	$2.29	$2.275
Operator or Chief Tester	2.15	2.135
Jr. Operator or Sr. Tester	2.02	2.005
Sr. Helper (over 1 year in Bargaining Unit)	1.89	1.875
Senior Helper or Tester	1.81	1.795
Helper or Jr. Tester (first 45 days in Operating Department)	1.38	1.38
Nitrate & Sulphate Plant Laborer	1.60	1.585
Assigned Laborer or Head Janitor	1.53	1.515
Janitor, Maid or Yard Laborer (after 1 year in Bargaining Unit)	1.43	1.415
Janitor, Maid or Yard Laborer (after 6 mos. in Bargaining Unit)	1.40	1.385
Janitor, Maid or Yard Laborer (first 6 mos. in Bargaining Unit)	1.16	1.16

We understand that your Union objects strenuously to entering into an agreement which would terminate on July 1, 1953, and to the inclusion in the agreement of a provision that there shall be no strike or concerted work stoppage until that date.

We would like to make our position clear on these two points.

As we have explained on many occasions, the products of the Chemical Plant are sold principally on contract. Each such contract provides for the sale and delivery of those products over the fertilizer year which begins on July 1 of each year and ends on June 30 of the following year.

To meet the competition of our competitors who manufacture and sell the same products which we make at the Chemical Plant, we must be able to assure our customers that we shall be able to comply with our obligations to deliver materials sold under such contracts.

It is, therefore, important to all of us that we have continuous and full operation of the Chemical Plant during the fertilizer year.

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If the contract is to extend for the term ending July 1, 1953, and your Union does not intend to call a strike or other work stoppage at the Plant prior to that date, we can see no foundation for refusing to say so in the agreement by including in it a no-strike clause.

We understand that certain members of the Committee acting with your Union in these negotiations have argued that if the contract contains a no-strike clause, the Company will have the right, during the term of the agreement, to discharge any man and he will have no recourse if he is wrongfully discharged. That contention is wholly in error.

The contract will provide that if a man is wrongfully discharged, during the term of the agreement, the question of whether or not he was wrongfully discharged can be submitted to arbitration and that the Company will abide by the decision of the arbitrators.

Furthermore, it is not the Company's desire or intention to discharge any man who is properly performing duties assigned to him under the terms of the agreement.

Your Union has suggested that the men represented by it be permitted to return to work, in which event the provisions of the new agreement between the Company and the Union could be worked out at a later date.

We cannot agree to that suggestion. Heretofore each agreement which we have made with your Union has provided that it shall extend for a minimum of one year. While suggesting that the men be allowed to go back to work while further negotiations are had, your Union has not been willing to agree that they would continue to work thereafter for any period of time.

As you well know, the Chemical Plant has been operated principally by supervisory personnel since your strike began on April 30. Maintenance work is now being done by the machinists who have returned to work only this morning under a new contract. It is unreasonable to re-

quest that we disrupt those operations by permitting the men represented by you to go to work when we have no assurance whatsoever as to how long thereafter they will continue to work.

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Therefore, we cannot settle this dispute until such time as the men and women you represent are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period. In our judgment, that agreement is most beneficial to the men and women whom your Union represents for after all you are making a contract to work not a contract to strike.

It now must be evident to everyone that this strike, which has now been going on for 54 days, has not benefited either the employees involved in it or the Company. Efficient operations at full capacity will earn a profit justifying the payment of good wages to the men and women working at that Plant and will afford to them the continuation of the liberal benefits which they enjoy, including life insurance, health and accident insurance, hospitalization allowances for them and their dependents, sickness benefits allowances, and vacations and holidays with pay.

The Company is not only willing but anxious to make a settlement with your Union which would be reasonable, honest and fair to both sides, thereby relieving the hardship which each Lion Oil Company employee who is on strike is suffering and the loss which the Company is incurring.

Consequently, we offer to meet with the representatives of your Union at any reasonable time to discuss further the matters involved.

Yours very truly,

Lion Oil Company
By T. W. Martin
President

General Counsel's Exhibit No. 10.

Copy

El Dorado, Arkansas

June 23, 1952

Mr. Billy Joe Davis, you may report to work for Lion Oil Company at its Chemical Plant at El Dorado, Arkansas in accordance with your rights under the Selective Service Act of 1948 as amended. You will report to work on the shift which begins at 8 AM on June 24, 1952, and will work on shift thereafter as directed.

Lion Oil Company
Chemical Division
/s/ A. M. Sprague
A. M. Sprague
Plant Superintendent

AMS: ew

Transcript of Testimony.

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E. P. SHELTON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * *

Q. Mr. Shelton, do you work for the Lion Oil Company? A. I do.

Q. In what capacity? A. Operator.

Q. Are you an officer or official of the Oil Workers International Union? A. I am a chairman of a five-man bargaining committee, and also secretary and treasurer of Local 434.

* * *

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Q. (By Mr. Keenan) I will ask him this: Did the union object to the company's new proposal? A. We did.

Q. On what grounds? A. That we didn't want any contract to run up to a blank date, against a well and end.

Q. What did you urge instead? A. We urged to keep the same kind of opening clause that we had always had, since the contract was first written in 1944.

Q. Did the other clause permit continued negotiations after

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the notice period had passed? A. It did.

Q. Now, was the July 1st termination date objectionable to the union, or did they agree to accept it? A. We were not opposed to July being the anniversary date, if we count continue our contract like the old one, but we were opposed to running up against a blank wall entirely.

* * *

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Q. (By Mr. Keenan) Mr. Shelton, let me carry you back in your testimony a little bit. You mentioned earlier that the International Association of Machinists represented the maintenance employees of the plant. Did the Machinists honor your picket line when the company, when you put up your picket line? A. Our picket line was put up about 11:00 o'clock the night of the 30th of April. The IAM did honor our picket line.

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Q. Now, do you know what date their contract expired? A. To the best of my recollection, their contract expired on May 15th, 1952.

Q. What occurred on that date? A. On that date, at midnight, the members of that union also went on strike.

Q. Since that date, were there both the CIO and the IAM pickets and the IAM picket signs up? A. From that date until the CIO was enjoined from picketing, both unions maintained picket lines at the main gate, the back gate, and the railroad spur.

* * *

Q. Now, again so this may be in the record at this spot, how long did the IAM picket line remain up? A. To the best of my recollection, the IAM signed a contract on June 20th and removed their picket lines that afternoon.

* * *

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Q. Now, did you meet again on the following day, June 20th? A. We did.

* * *

Q. Now, was any proposal made with regard to dropping the union's contention as to the termination clause and trading off for anything else? A. There was.

Q. What was that proposition? A. Mr. Goss stated to Mr. Dickens that if the union would

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accept the company's proposition, the term of agreement, would the company be willing to drop their demands for a no-strike clause.

Q. What was the company's answer? A. Mr. Dickens' reply was no. He said that there were still two fundamentals in any contract we would sign, and had to have them both in it.

Q. Now, was the status of the contract, the old contract, whether it was in effect at this time or not, discussed at this meeting? A. Yes, sir, it was.

Q. How did it come up? A. Mr. Goss, I believe I recall it this way, Mr. Goss asked Mr. Dickens, did the company recognize the old contract as being in effect.

Q. And what happened? A. Mr. Dickens' reply was that they didn't.

Q. Now, if there was a question of whether the company was adhering to the provisions of the contract now in effect, was it discussed? That is, living up to it? A. Mr. Goss asked Mr. Dickens the question, was the company living up to the old contract, and Mr. Dickens replied, the old contract was breached and therefore wasn't in effect.

Q. Now, I believe you met again on June 21st, is that correct? A. Was that on a Saturday? Yes, we did meet on June 21st,

* * *

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Q. And carry on, what else did Mr. Goss say? A. At that time, Mr. Goss told him that since we couldn't reach an agreement, that the union was offering to return to work unconditionally.

Q. Did Mr. Dickens reply to that? A. The only reply he said, "Do you mean without anything?"

Q. He said what? A. He said, "No strings attached."

Q. Was there any mention at this time by Mr. Goss about reporting time? A. Yes, when we made the unconditional offer, he said, "I would like to know what shift you want the employees to start reporting."

Q. Now, what happened next? A. The next thing that happened, Mr. Dickens said, "I don't know, I will have to see about that." Then he asked for a recess.

Q. What length of recess did he ask for? A. I think at that time he asked for a ten or fifteen-minute recess, but during that short recess, he came back to the door of the conference room and said it would take longer than he thought, and he would like to recess until 2:00 or 2:30 that afternoon.

Q. Where were you meeting at this time?

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A. In the Lion Oil Building, Room 605.

Q. After the recess, what next happened after the meeting reconvened? A. Well, shortly before the recess,

Mr. Goss asked Mr. Dickens did he have a walkie-talkie available where he could contact the powers-to-be. Just as we took up again, after this recess, Mr. Dickens made the statement that he was successful in getting the walkie-talkie in operation.

Q. Then, what else did he say? A. He said that the powers-to-be had conferred with them and they would not accept our offer to unconditionally return to work.

Q. Did he state at that time under what conditions, if any, it could put the employees back to work? A. He stated at that time that they would not put us back to work until we signed a contract containing a no-strike clause and a July 1st termination date, but he did propose they return us under the existing contract if we would amend it to include a no-strike clause and a July 1st termination date.

* * *

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Q. Was any specific request for any specific grievance meeting made? A. Yes, there was.

Q. At this meeting? A. Yes.

Q. What was that? A. We requested a meeting on the grievances, and then the next Monday I wrote Mr. Martin, the president of the company, a letter requesting a grievance meeting.

Q. What specific grievance, if any, was mentioned in this proceeding, in this meeting? A. We wished to file a grievance on Article IV, Section 3 of the contract. That is the pay in lieu of notice clause.

Q. What was the grievance? A. We felt that the company had laid us off in violation of that clause which provided two weeks' notice that you are going to be laid off, or two weeks' pay in lieu thereof.

Q. What layoff are you talking about? A. When they locked us out on the 21st of June. When the powers-to-be refused our unconditional offer to return to work.

Q. Did Mr. Dickens reply to that? A. Mr. Dickens replied that they were not recognizing any grievances, not accepting any grievances. They didn't figure

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that the contract was in effect.

* * *

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Q. Now, was the question of whether the offer to return to work, was a continuing offer brought up? A. Yes, it was.

Q. Did Mr. Goss have anything to say on that? A. Mr. Goss told Mr. Dickens, "I want you to understand this unconditional offer to return to work is a continuing offer and I will confirm it by letter Monday." Which, if I recall right, he wrote him a letter by registered mail the following Monday.

* * *

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Q. Now, did Mr. Dickens, during the course of this meeting, have any counter-proposal to advance with regard to the offer to return to work? A. Yes, after one of the recesses, Mr. Dickens did state if we returned under the old contract, which we contend was the existing contract, we could return under it if we amended it to include the no-strike clause and termination date.

* * *

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Mr. Keenan: Mr. Davis, I wonder if we can stipulate that the documents that you just handed me is a copy of a letter dated June 23rd, 1952, addressed to the Oil Workers International Union, over the signature of Mr. Martin, and that letter was distributed generally to the employees on strike?

Mr. Davis: I would not stipulate that it was distributed generally to the employees on strike. I would rather state the proposition more accurately by saying it was mailed to each of those employees on strike at their home address.

Mr. Keenan: I will accept the amendment and offer the document as General Counsel's Exhibit No. 9.

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Mr. Keenan: I now offer as General Counsel's Exhibit No. 10, a document headed El Dorado, Arkansas, June 23, 1952, and purports to have been signed by Mr. A. M. Sprague, plant superintendent, and this particular document reads as follows: "Mr. Billy Joe Davis, you may report to work for Lion Oil Company at its chemical plant at El Dorado, Arkansas, in accordance with your rights under the Selective Service Act of 1948

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as amended. You will report to work on the shift which begins at 8:00 a. m. on June 24, 1952, and will work on shifts thereafter as directed."

I understand that Mr. Davis will agree that each of the veterans who returned to work on or about this time signed a similar document with perhaps different dates and different reporting hours?

Mr. Davis: That was signed by Billy Joe Davis?

Mr. Keenan: Does that purport to be his signature. I notice it is signed by Mr. Sprague?

Mr. Davis: No, it isn't. I was mistaken. It isn't signed by him, but that was the conditions under which each one of the veterans who returned to work were given employment about that time under the Selective Service Act of 1948.

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Q. Now, was there any proposal made by the union on the no-strike clause at this meeting? A. Yes, sir, I believe that is the meeting that we made a proposal where we would eliminate Step 5 of the grievance procedure.

Q. In what connection would you eliminate Step 5 of the grievance procedure? A. After a grievance had occurred and gone through the first four steps of the grievance procedure, we would notify the company, the top of-

ficials of the company, that a dispute existed, and that if the dispute wasn't settled within a 60-day period, the

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no-strike clause would become inoperative.

Q. Now, in other words, there was a no-strike clause. You agreed to a no-strike clause and the Step 5, it would eliminate the fifth step of the grievance procedure? A. That is right, eliminate the fifth step of the grievance procedure and put in that provision, and we would agree to the no-strike clause.

Q. Was that acceptable to the company? A. No, Mr. Minert's reply to that, he said, "No, we can't accept that. We still will have actually a 60-day contract on any such type of a no-strike clause, and what we want is a year's contract."

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Q. (By Mr. Keenan) I will say, how long does it take under the most expeditious procedure, how long did it take for a grievance to be processed through the grievance procedure that had been tentatively agreed upon at the time you made the offer or Mr. Goss made the offer with regard to the no-strike clause we are discussing? A. It would take approximately, it has taken four to five months.

Q. That is what has been done. Reviewing the steps, what would

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be the fastest they could go through? A. From 25 to 30 days.

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Q. Now, I believe the record shows that the order restraining the union from picketing was dissolved on July 2nd, is that correct? A. It was resolved on July 2nd, Wednesday, July 2nd.

Q. Did any picketing begin upon that resolution? A. Well, it was fairly late in the afternoon of the 2nd when the judge rendered his decision, and shortly after rendering his decision, the picketing was resumed on the railroad spur track that afternoon at approximately 5:00 p. m.

Q. Was any picketing begun at the main gate at that time? A. There was no picketing at the main gate.

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Q. Did you have a meeting on July 3rd? A. July 3rd, yes, we had a meeting.

Q. Do you recall whether the company had any proposal on the no-strike clause at that time? A. Yes, they did have a proposal on the no-strike clause.

Q. What was that proposal? A. To the best of my recollection, that is when Mr. Minert proposed—let me think just a minute. That, at any time a discharge arose under the contract and a man was discharged, and it had gone through the grievance procedure up to the fifth step, that man could ask for one of the top officials of the company to review his case and after ten rulings against the employee, discharge him, and the no-strike clause would become inoperative.

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Q. Now, during the meetings of the 30th, 31st, and the meeting of August 3rd, did the union and the company come to an agreement? A. Yes.

Q. Did you execute a contract and a settlement agreement? A. We signed a contract and a settlement agreement at

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approximately 7:30 p. m. on August 3rd in Mr. Davis' office.

Q. I believe the agreement provides for the return of the workers as of August 4th, and that the employees

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Q. (By Mr. Keenan) Did General Counsel's Exhibit No. 4, the letter to the company, I note by the heading that it was also addressed to the Federal Conciliation Service, Federal Mediation and Conciliation Service, 14th and Constitution Avenue, NW, Washington 25, D. C.; was a copy of that letter also sent to the Conciliation Service? A. It was.

Q. Was a copy, in addition to that being sent to the company, sent to any state agency? A. A copy was sent to the State Labor Commission.

Q. Here in Arkansas? A. Little Rock.

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Q. Now, was there a decision made to take a strike vote in connection with the negotiations between the company and the union? A. It was.

Q. Do you know when that decision was made? A. I don't understand.

Q. Do you know when that decision to take a strike vote was made? A. To the best of my recollection, the best of my remembrance, it was made on February 11, 1952.

Q. Now, by whom was that decision made? A. By the membership.

Q. Now, I am not talking about the strike vote, but the decision to take the strike vote. A. The decision for the strike vote was at the request of the International President in Denver, Colorado.

Q. When was that request made to you? A. To the best of my knowledge, it was February 11th.

Q. Now, what items in the contract were at issue at the time this decision to take a strike vote was made? A. There was a number of them: Wages, shift differentials, holiday pay, certain classifications, sickness benefits, clothing

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allowance; I believe that is it.

Q. How about pay in lieu of notice? A. Pay in lieu of notice, which is Article IV, Section 3 in the contract you offered as an exhibit, was in dispute at that time.

Q. What is pay in lieu of notice? Just briefly describe that? A. Pay in lieu of notice clause is, if a man is laid off, he is to be given two weeks' notice of the layoff or two weeks' pay in lieu of the notice.

Q. Was the strike vote taken and when? A. The strike vote, to the best of my recollection, was taken on February 14th.

Q. What, if you recall the words, what were the words on the ballot? A. "Do you wish the International Union to call, conduct and conclude a strike?"

Q. Did that vote carry? A. That vote did carry.

Q. What was the percentage of the affirmative votes?

A. I believe it was 81.3 percent.

Q. About what percentage of the employees in the unit voted? A. I would say between 70 and 75 percent.

Q. Now, was there a date set for the strike or what might be called a deadline, and if so, when was the deadline first set and by whom?

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A. The first strike deadline was set at 12:01, March 3rd.

Q. By whom and in what manner was the deadline set? A. It was set by the president of the Oil Workers International Union.

* * *

Q. Now, Mr. Shelton, did you as a member and chairman of that bargaining committee have a bargaining session with the company on February 29, 1952? A. We did.

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Q. Was there any other discussion of strike deadline? A. There was.

Q. What was that? A. We discussed with the company, if the strike occurred, that did they want us to shut down the plant in an orderly fashion, or was it their intention to shut it down. We wanted to work out an agreement if that was what they wanted.

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Q. Was the strike postponed at any time? A. It was postponed.

Q. Was the postponement, was a notice given to the company at this meeting, this meeting of February 29th? To refresh your recollection, did you receive a telegram from Mr. Knight, the international president, postponing the strike one week at that time? A. We did.

Q. Was that telegram read to the meeting, or the notification of the one-week postponement given to the company at that meeting? A. I don't recall whether it was read at that meeting or not.

Q. You say there was a discussion of the strike, of shut-down procedure. What was the discussion? A. We asked the company if they wanted us to have the plant shut down in an orderly fashion by the strike deadline, or did they intend to run it as they had at the strike out there in the past.

Q. Who asked that, if you recall? A. To the best of my recollection, I believe Mr. Lawrence, the international representative, asked that question.

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Q. Now, was there another meeting on March 6th? A. There was.

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Q. What did Mr. Lawrence say to Mr. Sprague? A. He stated that the strike deadline was for the 10th, and that we wanted still to know if they wanted us to shut

the plant down, have it in a standby condition, or was it their intention

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to operate the plant

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Q. Did Mr. Sprague at that time or at a later time give the union any answer on the offer to shut the plant down? A. Mr. Sprague stated that if we was going to strike, we would strike, and the supervisory personnel would operate the plant. Their intentions were not to shut it down.

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Q. At this time, Mr. Shelton, you mentioned certain other strikes. You mentioned two. Would you briefly tell us when those strikes were? What union was calling them, and their duration? A. Our union, the CIO, called the strike in 1950 on April 21st. The strike was an eight-day strike.

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Q. Now, during the course of that strike, was the company notified in advance of the strike? A. They were.

* * *

Q. Now, you mentioned an IAM strike. Does the IAM represent a portion of the employees in the plant? A. They do.

Q. What portion? A. The maintenance employees.

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Q. You mentioned a strike previously by them. When was that strike? A. I don't recall the exact date it started, but it started in early May of 1951.

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Q. And in other words, the union assisted the company in shutting down that portion of the plant that the company wanted to shut down? A. That is right.

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Q. Was there a further postponement or further setting of the strike? A. It was.

Q. What was the new date? A. The new date, 12:01 a. m., April 30th.

* * *

Q. Did you go into bargaining session with the company on April 28th of this year? A. We did.

Q. Now, do you recall what occurred at that meeting? A. We had meetings April 28th, 29th, and 30th.

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Q. Now, was there any proposal relative to a no-strike clause made at that meeting? A. The company representatives, if I recall right, Mr. Dickens—

Q. Was it Mr. Smith? A. One or the other, Dickens or Smith, stated that the company wanted a no-strike clause. As far as proposing one in writing, they did not.

Q. Now, at any time prior to that time during the course of these negotiations, had a no-strike clause been mentioned? A. No.

Q. Did Mr. Dickens or Mr. Smith, whoever it was who made that proposal, advance any reasons? A. Well, one of the reasons he advanced, it was due to the fact that he and Mr. Davis had made a trip some time in February to our General Counsel's office in Denver, Colorado, and since he advised them that under our contract we had the right to strike, and they said they wanted a no-strike clause.

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Q. Now, on the 30th, I believe you said the union cut its demand to 22 cents, and that had been presented by Mr. Smith to the company. Was that offer accepted? A. When we met on the morning of the 30th, Mr. Smith told us his people still thought those demands were unreasonable and could not agree to them.

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Q. Now, in the afternoon meeting before that last meeting, had there been any discussion of the no-strike clause? A. There had.

Q. What was that discussion? A. In that last offer, the company made, the pay in lieu of notice was still in issue in the dispute. The company's

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proposal was that if we would agree to their pay in lieu of notice proposal, they would drop their proposal of a no-strike clause.

Q. That was rejected along with the rest of the proposals, is that correct? A. That is right.

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Q. Did the strike proceed as planned? A. The strike occurred at 11:00 p. m. on the night of the 30th.

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Q. What was the company's proposition as to the termination date? A. The company's reply in regard to the termination date, they proposed that their contract year for selling fertilizer ran from July 1st to July 1st, and that is the way they wanted the labor contracts to run.

* * *

Q. All right? A. He said he did. I asked him when, and he said, "Right now."

Q. All right? A. I said, "Has anybody coerced you or given you any promises or given you any idea that you are going to get any bonus?" He

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said, "No." I then asked him if he was willing to work on the same basis that all the people were working in the plant at that time and he told me that he was.

Q. All right? A. I also asked him if he would continue to work if he started in. He told me that he would, that he had no objections to going and coming as the others were doing. With that assurance, we put him on on the 15th.

Q. Did you mention as you said a while ago in the early part of your testimony, that you got assurance from him that he would continue to work in spite of the picket line? A. Yes.

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Q. Did you conduct the same type of interview with each of the men that you allowed to come back, as you conducted with Mr. Anderson? A. I did.

Q. And from each you exacted an assurance that they intended to stay at work? A. That is true.

Q. Now, I believe you said in each instance you made no move to secure an employee until such time as that employee phoned in to you? A. That is right.

Q. No foreman had authority to allow a former striker to report to work until that striker had come to you, is that correct? A. We centralized all people asking for work in one person, and that was me, during the strike period.

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Q. Mr. Shelton wants to know, if he has called you about the same time Mr. Anderson called you, would you have let him in?

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A. Mr. Counselor, knowing Mr. Shelton, I think I would have had a long discussion with him because I know that Pat would not cross the picket line. I would like to have it clearly understood that the operations of that plant are so critical that we did not want to disturb them unless we had assurance that the entire bargaining unit would come back under an agreement that would have a specific time limit, that they would work continuously throughout that time.

Q. In other words, you would not have let individual employees come in? A. I think I would have screened them pretty carefully, depending on the needs of the plant.

Q. If you were reasonably sure that they would observe the picket line, you would not have let them in, is that correct? A. They wouldn't have been any reason to because we needed men who would work continuously in order to maintain the operations of the plant.

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R. E. MINERT, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are R. E. Minert? A. Yes, sir.

Q. Mr. Minert, what is your position with Lion Oil Company?

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A. Vice-President.

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Q. Now, at that meeting, you might want to refer to your minutes on this: Was there not a discussion as to a

settlement of the entire dispute including the unfair labor practice charges that had been filed by this time? A. Yes, sir, there was a discussion of all phases of the settlement at, I believe, the last two meetings that I had with the union at the hospital.

Q. Did you not at this meeting, at both of those meetings, place a condition upon the settlement of the controversy, the return to work and the signing of a contract, the withdrawal by the union of the unfair labor practice charges in this proceeding? A. I don't know if I placed it as a condition, but I did state that I thought that all matters should be settled if possible, so we could go back to work, and one of which I included, the charges of unfair labor practice that the union had made.

Q. Did you not state that the company would not enter into a settlement, that you would not settle, that would not settle all matters outstanding, including the unfair labor practice charges? A. I don't know if I stated we would not. I recollect that at the close of one of the meetings, after we had practically adjourned, one of the boys asked me some questions as to whether

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I thought that was a requirement, and I recall replying that I thought we would expect that to be done.

Q. Was it not this was not this phrase used, "Mr. Young asked if the company still expected the union to withdraw that charge, and Mr. Minert said, 'It certainly does?' "

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Q. "Mr. Goss said that the union is guaranteed these other avenues, the cases before the courts and the NLRB and the company is trying to make us drop them, and he added that they constitute one of our disputes."

Do you recall Mr. Goss making that argument? A. I think so.

Q. "Mr. Minert said that is what we are settling. Mr. Goss said that the union would not drop them," and you

replied that "We won't settle"? A. I don't recollect the last statement.

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H. D. DICKENS a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) Mr. Dickens, you are an attorney at law, associated with the firm of Davis and Allen, is that correct? A. Yes, sir.

Q. You are the Mr. Dickens mentioned in the testimony here as conducting some of the negotiations for the company, is that correct? A. Yes, sir.

Q. Now, Mr. Dickens, on June 21st, you heard considerable testimony as to a meeting that occurred on that date, I believe? A. Yes, sir.

Q. Now, do you recall that meeting? A. Yes, sir.

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Q. Now, did not at this time Mr. Goss repeat his offer of a

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return to work? A. I think so, he repeated it several times.

Q. I call your attention to the last sentence of the first complete paragraph on page three of the minutes which is as follows:

> "He repeated that the employees are offering to return to work, to work unconditionally, with no strings attached."

Is that what is in the minutes and is that your present recollection? A. That is my present recollection, that he made such a statement at that time.

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Q. I call your attention to the first complete paragraph after the recess in the minutes and I read you the following:

"At the conclusion of the recess Mr. Dickens stated that the company declined to consider any grievances until such time as we negotiate a contract."

Is that what is in the minutes? A. That is exactly what is in the minutes.

Q. Does your recollection vary from that? A. It does.

Q. In what time? A. To the extent that I said until we settled the strike. If there is any particular difference, that is my recollection, but I don't know.

Q. Maybe the next paragraph of the minutes, maybe you said both. The next paragraph reads:

"Mr. Goss asked if the company recognized the present grievance procedure and Mr. Dickens said not while the employees are on strike." A. That is the statement, and to my recollection it is correct.

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Q. Maybe this might refresh your recollection. About this time, didn't somebody ask you if you wanted these employees to

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sign an individual agreement and did you not reply, "Well, a yellow dog contract wouldn't be any good"? A. I never made any such statement and nobody asked me that question. The facts of the matter, I asked Mr. Goss, I said, "You are not suggesting, are you, as a representative of the union, that we deal individually and contract individually with each employee?"

He said he was not. He did not mean that. But, I don't recall anybody mentioning a "yellow dog" contract or anything of that nature.

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JOHN HENRY YOUNG, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are John Henry Young? A. Yes, sir.

Q. You are a member of the Union's Bargaining Committee that handled the negotiations with Lion Oil Company? A. I am.

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Q. Now, Mr. Young, you were a member of the Bargaining Committee that was bargaining in the June 21st conference, is that correct? A. I was.

Q. Now, when you went into that conference, did the union have any intention of doing anything unusual? A. Yes, sir.

Q. What had you intended to do? A. Offer to go back to work unconditionally.

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Q. Now, was there any discussion of who would make the offer and the manner in which it would be made?

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A. Yes, sir.

Q. What was that discussion? A. Mr. Goss said he would like to make the offer and we agreed that he should,

are now back at work in the plant, is that correct? A. The agreement returned the men to work on the 7:00 o'clock shift the morning of August 4th, that is correct.

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Q. (By Mr. Keenan) After the offer to return to work on June 21st, did you individually apply, either in person or by telephone, for reinstatement? A. Yes, I applied both ways.

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Q. Now, did you ever personally apply for work at the plant after the offer to return to work was made on June 21st? A. To the best of my recollection I made four personal

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appearances at the main gate.

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Cross Examination.

Q. (By Mr. Davis) Mr. Shelton, the union which is the exclusive bargaining agent for the employees of the Lion Oil Company involved in this matter, is the Oil Workers International Union, CIO, is it not? A. That is right.

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Q. For two or three years last past, you have been designated as a representative of the International Union to negotiate with Lion Oil Company with respect to matters concerning this bargaining unit, have you not? A. I have.

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Q. Mr. Shelton, when this strike was called, beginning on April 30, 1952, it was called by the Oil Workers International Union, CIO, was it not? A. It was.

Q. And it was called as a part of the nation-wide strike in the oil industry which was called by the Oil Workers International Union, CIO, and other unions? A. That is correct.

Q. In your direct examination you stated that at the last meeting between representatives of the union and the company,

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just prior to the beginning of the strike here involved, which was April 30, 1952, the demands of the union were specific to many matters. Was an increase of 22 cents an hour in the hourly wage rate of each man involved and an increase of shift differentials to six cents an hour with the evening shift and 12 cents an hour for the graveyard shift and one additional holiday.

Now, that was the demand that the Oil Workers International Union, CIO, was making in its nation-wide strike, was it not? A. That demand was a program of the International Union that had been concurred in by the local union.

Q. You stated in your direct examination that on June 23, 1952, you went to the plant individually and reported to work. Now, you reported to work, I presume asking for your job that you had on April 30, 1952? A. I believe you are wrong on the date. I didn't report in person on June 23rd.

Q. What date was it? A. Well, on June 22nd I made numerous phone calls and again on the 23rd and one more the next day, the 24th. Then, between the 24th and the 30th, I made four personal appearances at the gate.

Q. And asked to be permitted to go on the job you had on April 30, 1952? A. I asked to go back to work since I was locked out on June

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21st after the union had made its unconditional offer to return to work. They wouldn't let us return as a union and I was trying to return as an individual.

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Re-Direct Examination.

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Q. Mr. Shelton, right before the unconditional offer to work was made in the June 21st meeting, you and the committee called a recess, is that right? A. That is correct.

Q. Did you discuss what you were going to do? A. We did.

Q. What did you discuss?

* * *

A. Shortly after the morning of the meeting, we discussed the issues in dispute in general. The company had no new offer to make. So, prior going to the meeting, we had this unconditional offer in mind and if no progress was made, the company had nothing else to offer. So, I recall that before submitting this offer to Mr. Dickens, Mr. Goss asked for a two or three minute recess. Mr. Goss, in the committee recess, he walked down

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the hall, we walked down there to talk our business and since Mr. Dickens was not the powers-to-be, we didn't know whether it would be advisable to make the unconditional offer to him or try and get him to get someone out there that had authority to say "yes" or "no". But, we decided to go back into the meeting.

As I testified earlier, Mr. Dickens, as soon as we got back in the meeting, he informed us that he was the powers-to-be. Mr. Goss informed him, "Well, that simplifies matters a whole lot then."

During the recess, I can recall that Mr. Goss instructed the committee, he said, "Now none of you don't make a break here and condition this thing on the old contract, the existing agreement or anything, because we are making an unconditional offer to return to work and we don't want any conditions or strings on it and they might contend if we mention the old contract, that it is a conditional offer and I am making an unconditional offer to return to work."

We concurred with Mr. Goss's offer.

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A. M. SPRAGUE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) What is your full name? A. A. M. Sprague.

Q. What is your position with Lion Oil Company, sir? A. My title is the Plant Superintendent of the Chemical Division of Lion Oil Company.

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Q. Now, Mr. Sprague, since the men made an offer to return to work on June 21st, there has been evidence of numerous requests of various employees, some directed to you, seeking a method by which they could go back to work. Would you tell me what, if any, policy you set up to permit the return of individual strikers after June 21st? A. We continued on the policy that we had since the beginning of the strike, as of April 30th, and that was that those people that requested to return to work, we would put them on as we needed them, as operations permitted. We, at the plant, did not consider it advisable to have our operations upset by men coming to work and then sud-

denly deciding not to return within possibly eight, 16 or 24 hours later. We had operated the plant as of the 21st and that is some 53 or 54 days since the strike started on April 30th, and we had started up equipment,

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maintained it in operation with that personnel that was then working. We did not deem it advisable to start up additional equipment with a group that we did not know that would continue coming to work regularly. We had no definite assurance that the group that did apply for work through telephone or at the gate, or one way or another, would continue to come to work on their shifts.

* * *

Q. Well, now, I am talking about after June 21st, when these men made an offer to return to work collectively and individually. Are you aware of any statement made by them or their representatives, that they would not stay at work? A. I don't know. I don't know of any.

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Q. Certain employees were permitted to go to work after June 21st, is that not right? A. That is true.

Q. Now, what assurances were you given by these employees that they would stay at work? A. I was given an assurance by each employee, prior to the time he started working, that he would continue to come to work daily and continuously throughout the period of the remainder of the strike.

Q. Each employee who came to the picket line or who came to work at that period, gave you an assurance that he would stay at work? A. Yes, sir.

Q. Now, let me see: In what manner were those assurances given? Did you ask for it in written form or verbally? A. Verbally.

Q. You interviewed each of those men yourself, is that correct? A. I did.

Q. Why is that? Let me ask you this: Are you aware of the fact that during the period of two or three days after June 21st, that many men were trying to get ahold of you to ask you whether you would let them come back to work?

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A. I was aware there were phone calls coming in to ask about coming back to work.

Q. Were you aware that people were asking to talk to you? A. I was.

Q. In that regard? A. I was.

Q. Had you given instructions to the guards and foremen generally that anyone who requested to return to work would be referred to you? A. I had.

Q. Now, when you received these numerous phone calls, why didn't you respond and talk to these men? A. I talked with some men. I didn't talk with all of them because I had work to do. I was at the plant 24 hours a day, practically.

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Q. You say he called you on the first and you didn't need him. I note from the record before me that he did finally go back to work on July 15th. How did it happen that you brought him back? A. Mr. Reedy called me on the 10th, at which time I told him that I didn't need him.

Q. All right. A. He called me also on the 14th.

Q. Yes? A. We didn't need him then. We did need him on the 15th. We asked him to come in for an interview.

Q. All right. On the 15th you say Mr. Reedy called you? A. Yes.

Q. Now, you asked him to come in for an interview? A. That is right.

Q. Who did he interview? A. Me.

Q. What was the substance of this interview? A. He asked, Mr. Reedy, I asked him if he wanted to go to work.

the company would require the union to withdraw their NLRB charges before a settlement of the strike could be effectuated. At that time I believe Mr. Minert gave the impression that they would have some feelings about it, that they thought we should—the arbitration should settle the issues and we shouldn't try to go back—try and have good relations, shouldn't try and settle part of the issues in the dispute, and that point wasn't labored on too much at that time, but it was in a later meeting of the 16th.

Q. Do you recall Mr. Minert expressing any opinions or any inclination or desire with regard to the general NLRB charges at that meeting? A. Yes, sir, it was Mr. Minert's opinion in that meeting that the company would require us to withdraw those charges before we could arrive at any kind of a settlement to the dispute.

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Q. All right, now, do you recall a meeting of the employees here involved, a union meeting after that July 11th meeting? A. I do.

Q. What date was that meeting, or what day, if you can recall? A. I am not sure of the exact date. It was between the 11th and the 16th because we asked for the meeting of the 16th, because of the questions that arose at the union meeting.

Q. What questions arose at the union meeting? A. The employees asked me, while I was giving a report of the negotiations, if we could arrive at a settlement and still proceed with the Board case, the NLRB case we had on file, and I told the employees in the union meeting that the company had indicated in the meeting on the 11th, as most companies do, that they would desire to have those withdrawn before we could settle the dispute, but it was my opinion they would not demand it because I felt it was an illegal demand.

Some of the employees then asked me what I thought the company would do, and I said I didn't know until I went and asked them on that point.

Q. In the meeting of the 16th, did you bring up the subject, and, if so, how? A. Yes, the union asked for the meeting of the 16th for the express purpose of determining if the company considered it a

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mandatory item.

Q. You said, "expressed." Did you express that purpose to the company in your request for a meeting? A. Not in the request for the meeting, no, but following, after the meeting had convened and we were started, the discussion in the beginning of the meeting was between Mr. Minert and myself, because here again I asked the committee to let me handle this discussion until I found out just where we were on the question of the Labor Board charges, and Mr. Minert, in our discussion, he made it quite clear to me that the company would not settle the labor dispute unless the union agreed to withdraw the Board charges.

Then, following that, we had some discussion that; I believe, some of the other committees indulged in at some point along there, I asked Mr. Minert specifically if they would require us, if the withdrawal of the NLRB charges was a mandatory feature of a settlement, and he said that it was, and I told him that the union would not withdraw the NLRB charges, and whereupon he said, "Then, we can't get together. We can't make a settlement."

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Q. Did Mr. Minert recede from his position at that meeting? A. He did not.

Q. Are you aware of any recession from that position until July 30th, when I believe there has already been testimony that Mr. Davis, July 30th when Mr. Davis did withdraw that demand as a point of the settlement? A.

My last meeting was on the 16th, and at the close of that meeting there had been no recession from that position.

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J. B. ROGERSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * *

Q. What is your employment at this time? A. I am employed by the Lion Oil Company, as Manager of Manufacturing.

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Q. Under normal conditions, Mr. Rogerson, is that plant operated continuously? A. It is operated 24 hours a day, 365 days per year.

* * *

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Q. Is there any danger in shutting down those reform units and in starting the reform units with respect to keeping the operation in balance? In other words, your mixture is out of kilter, would there be danger in it? A. Yes, sir, if you did not have the proper steam-gas ratio in the tubes, the catalysts in the tubes would be destroyed and that in turn would destroy the tubes. We had that happen about a year ago. One of the operators made a mistake and cut the steam out and destroyed the reform tubes and the catalyst, and it cost about one hundred sixty-five or a hundred and seventy thousand dollars to repair it.

* * *

and he went further in the discussion, that he would make the offer, that none of us, or he, none of us would refer in any way to the old contract, to put a condition into it. It was an unconditional offer to return to work.

* * *

Q. What was the first thing after you went back into the meeting? A. Well, to the best of my memory, that is when Mr. Dickens made the statement he was the powers to be. Mr. Goss said, "Well, I am glad to know that because that simplifies matters." Or, "That makes it better." I believe that is the statement he

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used.

Q. And did Mr. Goss continue? A. Yes, he told Mr. Dickens that we were offering all strikers back to work unconditionally, and asked him what schedule or system would he desire us to return to work on.

Q. Did Mr. Dickens reply to that? A. Not directly. With a look of amazement on his face, he said, "Do you mean unconditionally?" Mr. Goss said, "Unconditionally, no strings attached."

At that time I believe Mr. Dickens asked for a recess.

Q. How long a recess? A. I believe he asked for 20 minutes and approximately, well he might have used the 20 minutes, but some time shortly after, he came back and stuck his head in the door and asked us to recess until 2:30 that afternoon.

Q. Now, to the best of your recollection, you have told us what Mr. Goss said, is that correct? A. That is right.

Q. Do you recall Mr. Goss in any way mentioning the old contract when he made that offer at that time? A. No, sir, he did not mention it at that time.

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Q. Now, Mr. Young, at that meeting, I imagine it was reasonably long. I am going to take you close to the

end of the meeting, and ask you if near the end of the meeting Mr. Dickens made another proposal to the union relative to the return to work?

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A. At that time, he offered for us to go back under the old agreement, if we would amend it to contain a no-strike clause and a term of agreement as they desired.

Q. Do you remember when he made that offer, did Mr. Goss say anything to him as to what agreement was meant? A. Yes, Mr. Dickens referred to the contract as being the old agreement, I believe, and Mr. Goss said, "Do you mean the contract that is now in effect?" And there was a contract laying on the desk, and Mr. Dickens said, "I mean this yellow book here."

Q. Now, Mr. Young, I am going to ask you to think very carefully and tell me who mentioned the old contract first in connection with this return-to-work offer Mr. Goss or Mr. Dickens? A. To the best of my memory, Mr. Dickens.

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Q. Let me ask you this: At any time, at any of these sessions you have had, relative to going back to work, did anybody from the company intimate that they wanted you to go back under less favorable conditions than you came out on? A. No, they didn't.

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Q. Now, let me ask you this: If, the night before or shortly before the July 16th meeting, had there been a union meeting? A. There had.

Q. In the union meeting, had anyone raised the problem we are talking about now, the withdrawal of the NLRB charges before a contract was signed? A. To the best that I remember, we reported the progress of the negotiations, reported that the company had insinuated we

would have to withdraw the charges and our membership demanded that we get a direct answer or request that we get a direct answer as to whether we would have to withdraw those charges or not. It was our opinion, and we told the membership that the company would not take that stand.

Q. For what reason? A. In the first place, we felt it was a violation of the law.

Q. Now, at this 16th meeting, did anyone initiate a discussion of this problem, specifically, did Mr. Goss do it? A. Yes, sir, Mr. Goss handled that phase of it. The negotiations

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were opened in the usual manner and we got around to the two big problems, the no-strike clause and the term of agreement, I believe, in this meeting, but anyway, the purpose of the meeting was to get the company to take a stand one way or the other on this. So, Mr. Goss asked Mr. Minert a direct question, if it was the company's stand or the company's contention that the union would have to withdraw their charges with the National Labor Relations Board before they would make an agreement with these employees, and he said that it was.

Mr. Goss stated that the union would not withdraw the charges.

Q. What did Mr. Minert reply to that? A. Mr. Minert said, "We can't make an agreement, then."

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C. W. WHITWORTH, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * *

Q. You are an employee of the Lion Oil Company? A. I am.

Q. You have been on the Bargaining Committee that bargained with the company in this current controversy, is that right? A. I have, with the exception of July 21st.

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Q. Do you remember towards the end of this meeting, any discussion between Mr. Young and Mr. Minert? A. I do.

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Q. To the best of your recollection, what did John Henry say, and what did Mr. Minert say, in as much detail as you can give it to us? A. I believe John Henry asked Mr. Minert, should we get together on the contract, contractual issues of this, and would that be one of the conditions of the settlement, dropping the National Labor Relations Board charges, and Mr. Minert at that point said that he felt that when and if we signed a contract, we shouldn't have any strings left hanging anywhere at all; we should close the whole thing up, start out with a clean slate and go back to work.

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Q. Some time after that meeting of July 11th, did you have a union meeting? A. Well, I believe after that meeting there was on a Sunday following that meeting, we did have a union meeting here in this Court House, the courtroom here.

Q. Was there a question of the withdrawal of the NLRB charges discussed? A. It was discussed at length in the meeting with the membership here.

Q. Was there action taken? A. Well, the membership directed us, or asked us to go back and find out if that was one of the conditions of settlement, to drop the lock out charges.

Q. Did you have a meeting with Mr. Minert on the 16th of July, again in his room? A. We did.

Q. In the hospital? A: We did.

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Q. All right, now specifically with regard to this issue, do you recall a discussion with Mr. Minert led by Mr. Goss? A. It was brought up. There was a discussion of the contract and it got into the contract settlement and what conditions it would take to wrap up the whole contract. Mr. Goss asked if that was one of the conditions of the settlement.

Q. How did Mr. Goss bring the subject up, if you recall? A. It was led up to, as well as I remember, by the fact we was just finding out the conditions of settlement, what it would take to wrap up the contract or settle the contract.

Q. Did Mr. Goss mention the discussion at the union meeting? A. He did; he told Mr. Minert that the people wouldn't sign a contract, didn't want to sign a contract and have to drop their NLRB charges.

Q. All right, now; what happened thereafter in the discussion between Mr. Goss and Mr. Minert? A. Mr. Minert made the statement at that point that there wouldn't be a contract unless we did drop the NLRB charges.

Q. There would or would not? A. Would not be a contract unless we dropped the NLRB charges.

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ROBERT F. GOSS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are Mr. Robert F. Goss?
A. Yes, sir.

Q. You are the International Representative of the Oil Workers' International Union, is that correct? A. That is correct.

* * *

Q. Now, Mr. Goss, you were at the meeting of June 21st? A. I was.

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Q. During the recess, what discussion was pursued between you and the committee?

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A. I would like to explain one factor, that generally in our bargaining sessions no one person conducts all of the discussions for the union. It is very common that everybody on our committee has a right to come into the discussion at any time. I asked the committee to please refrain from entering the discussion on the offer to return to work until I had made it clear that the offer to return to work was completely unconditional, and upon the assurance of the committee that I could do that, we then went back into the bargaining session.

Q. Do you remember any other discussion? Did you advance any reasons at that time as to why you wanted to make that so plain? A. On that point, Mr. Counsel, there had been quite a bit of discussion between members of the committee and myself about some of the previous offers where they said they unconditionally offered to return to work under the terms of the agreement, and it was my own amateur opinion that if you made an unconditional offer to return to work, you could not condition it in any manner, and I cautioned all of them in the discussion not to mention the old contract because I wanted the offer to be solely unconditional.

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Q. What happened after the recess? A. The first statement was made, Mr. Dickens replied, "I am the powers that be."

Q. Then, what did you say? A. Whereupon I told Mr. Dickens that I was very happy to know that because it would simplify my problem. It was that I was offering to return all the strikers unconditionally, and wanted to know what schedule they should report on with no strings attached.

Q. At that time, let me ask you this: When you say "unconditional," did you attach at that time the phrase "unconditionally under the old contract" to your testimony? A. I did not.

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Q. Now, what happened after you went back into the meeting? A. Mr. Dickens, I am sure in jest, said he was successful in getting the walkie-talkie in operation and that he was authorized to tell us that he could not permit the employees to return to work until a new agreement had been reached that would include a no-strike clause and the company's desired term of agreement.

Q. What discussion, if any, ensued after that? A. I believe it was at that point that I asked Mr. Dickens if he didn't consider the old contract still in effect, and Mr. Dickens, I believe, replied that he couldn't answer that because he felt that was involved in a legal snarl.

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Q. Any question of a lockout brought up by them? A. It was at that point then that I asked Mr. Dickens if he was locking out the employees, and I believe Mr. Dickens at that point stated that he didn't think so. In fact, I think he was pretty firm that it wasn't the company's opinion they were locking us out; that if the employees wanted to return under the old contract, modified with a no-strike clause, something might be worked out.

I believe that was in jest, because he smiled. I don't think it was a counterproposal as was normally made.

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Q. In order to shorten your testimony, sir, and to bring out the matters about which there appears to be some controversy, what was the company's response as to your request to discuss grievances and in particular this grievance on pay in lieu of notice? A. The company made it quite clear that they didn't feel we had the right to discuss these grievances. The contract wasn't in effect.

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Q. Right near the end of the meeting was there another discussion of the offer to return to work in which the old contract came into it? A. There was.

Q. What was that discussion? A. That was the time that Mr. Dickens said that the employees could return to work under the old contract if it had a no-strike and a July 1st termination date, and I asked him if he didn't mean the agreement in effect, and he pointed at the yellow book on the table and said, "Under those articles as amended." I believe that is what he stated.

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Q. (By Mr. Keenan) Mr. Goss, you remember the first meeting with Mr. Minert in the hospital on July 11th? A. I do.

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Q. Do you remember the discussion between Mr. Young and Mr. Minert, at which the matter of the charges in this case were brought up? A. I remember some discussion at that time.

Q. Will you tell us what you remember of those discussions? A. Well, the question came up as to whether

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Q. And, when you received information at 6:00 o'clock on April 30, 1952, that the employees involved in this matter were going on strike at 11:00 o'clock that evening, did you assemble your supervisory personnel in preparation for operating the anhydrous ammonia section? A. Yes, we did. We put the whole supervisory force on immediate standby, so they would be available if at 11:00 o'clock a strike actually occurred. We had in mind for three purposes, we would keep the ammonia plant itself going in order to manufacture some ammonium nitrate we had under contract, to ship to farmers and other people, and that we also didn't have any way to know how long the strike would last, whether it would be one day or 30 days, and if it was only going to be one day it would be ten days to shut it down and start up again, and we had no ammonia particularly in inventory.

You would not be able to call back all of the employees at one time because the basic product in that plant is ammonia. So, to me, it was to the advantage of the company, to the public, and to the employees, that we keep the ammonia section in operation during the strike.

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Q. In making that recommendation, did you give any consideration to the possible damage that might occur to the ammonia section by shutting it down? A. Yes, sir, we realized for the past several years we had never been able to shut down a reform furnace without damage to the tubes. If we did shut down the reform furnaces and damaged the tubes, we would be down several days or weeks before we could have ammonia even to operate, and besides there would be several more days before we could have ammonia we could give to the nitric acid plant and the sulphate plant and the ammonium nitrate solutions plant. Also, we considered the damage and the chances of ruining the converters in the ammonia section if we had to shut them down.

Those two things were the main hazards in having to close down the ammonia plant. So, on that basis, we

figured that the best thing for everybody concerned would be to try to keep the ammonia plant on stream.

Q. Did you take into consideration any element of the economic loss of the company which would be entailed in shutting the plant down as a whole? A. Yes, sir, I took into consideration that it would be to the interest of the company that we keep the ammonia section operating.

Q. Of course, the strike began on April 30, 1952. Will you state whether the month of May and the month of June are months

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in which there is a great demand for anhydrous ammonia for fertilizer? A. Yes, sir, May and June are the growing season for crops in this country, and during that time is the time that you need ammonium nitrate, you need ammonia and need ammonium sulphate, and that is when our contracts, people that have contracted for fertilizer particularly, want delivery.

Q. And it was your desire to meet your obligations under as many of those contracts as you could? A. As far as possible.

Q. Now, when the employees here involved went on strike at the plant at 11:00 p. m. on April 30th, what did you do with respect to further continuing the operation of the plant or some portions of it? A. We immediately began to close down the portions of the plant we knew we did not have sufficient supervisory foremen to operate efficiently and safely, and those boys went on standby for shift relief for the boys operating the ammonia section. We continued to operate 75 percent of the ammonia plant. We closed down one reformer which is approximately 25 percent of the ammonia section that was closed down.

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Q. Mr. Rogerson, what in your opinion is the replacement value of that plant? A. About $55,000,000.

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Cross Examination.

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503

Q. You had ample notice that the strike was coming on? A. To take care of the physical properties in the plant, yes, sir.

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Q. Now, you spoke a moment ago and I would like to go into this a little bit with you. I believe your testimony was in every respect, when you talked about the shutting down of a particular operation, that it could cause considerable damage if not done properly and almost always did. I believe that was your testimony about several of those operations, for instance, reform. I believe I wrote this down, "It is almost impossible to shut down a plant without damage."

Is that right? A. The gas reform section?

Q. Yes. A. Yes, that is correct. I am thinking particularly about the tubes, which are 25-20 stainless steel. That is a high nickel content tube and they are welded and operating at 1800 degrees fahrenheit.

At night, it is almost a white heat. Those tubes stay at that temperature 24 hours a day, 365 days a year and they are all right, but when you cool one down to room temperature, atmospheric temperatures, it almost always will break or crack in the welds.

Now, the reason we have that kind of tube is because during the war, World War II, that was the only kind of tube we could buy. Today, if you are buying new tubes, you get a

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seamless tube but the units out there are equipped with that kind of equipment and it has to be operated very

carefully if you are to operate without breaking those tubes. I mean shutting it down.

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514

A. M. SPRAGUE, a witness called by and on behalf of the Respondent, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination.

* * *

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Q. In your previous testimony, you have stated what was done when the strike began with respect to shutting down some of the facilities and continuing the operation of the facilities for manufacturing anhydrous ammonia. I would like, however, for you to give us this information with respect to the time you commenced other operations.

When did you begin the production of ammonium nitrate solution, after the strike began? A. The ammonium nitrate solutions plant was started—May I refer to my notes? I have those dates set so I can give them accurately.

Q. You may look at your diary or whatever you kept about it. A. The solutions plant was started on May 22, 1952.

Q. How long was it operated then? A. It was operated intermittently until July 18th.

Q. When did you resume the production of sulphuric acid? A. The sulphuric acid plant was started on June 25, 1952.

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Q. Did you subsequently begin the manufacture of sulphate ammonia? A. Yes, sir.

Q. At what time? A. That was on the 28th of June, 1952.

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Cross Examination.

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Q. Now, has anyone ever from the union ever threatened to walk off the job without notice? A. To my knowledge they haven't said that to me.

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563

J. L. DOUGHTERY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Davis) What is your name? A. J. L. Doughtery.

Q. What is your employment, Mr. Doughtery? A. I am coordinator of the labor relations of the Lion Oil Company.

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Cross Examination.

Q. (By Mr. Keenan) Mr. Doughtery, you are a shorthand reporter? A. I took shorthand, yes, sir.

Q. Had it been your practice to take notes in these meetings? A. Yes, sir.

Q. That you attended? A. Yes, sir.

Q. Did you take notes in shorthand, your notes, did you take them in shorthand? A. Yes, sir.

Q. Did you later transcribe those notes? A. I didn't transcribe them myself. I dictated those notes to my secretary and at the time transposed the thing into a narrative.

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Q. I am speaking about the one that begins after the recess. It is on page two of the June 21st minutes? A. Yes, sir.

Q. Does that purport to reflect in narrative form what Mr. Goss said at that time? A. Yes, sir.

Q. And it reads, if you will follow me, "After the recess Mr. Goss stated that the union offered an unconditional return of all the strikers and asked Mr. Dickens when the company wanted the employees to return to work."

Then it says, "He said, 'We are ready and available.' Mr. Dickens stated that that is an operational problem and he couldn't say when they could return. Mr. Goss added, 'The union is not asking an increase in wages or anything else.' "

569

Does that, to your recollection and from what you see here before you reflect what Mr. Goss said at that time and what Mr. Dickens replied to him? A. Yes, sir, that was the first statement of the offer.

Q. Now, would you then point to me from the minutes or from your recollection, wherein the meeting Mr. Goss qualified his offer in any way? A. It was later on in that meeting, on the third page of those minutes we gave you, the bottom paragraph.

"Mr. Goss said the employees are offering individually to return to work under the terms of the existing contract now in effect. Mr. Dickens stated he wanted them to return to work but we must have an agreement. Mr. Goss elaborated that the employees are offering to return to work and continue to bargain on a new contract."

Q. So, you find, according to your recollection, Mr. Goss brought that matter up later in the meeting, after having once made the offer as you first found it, is that correct? A. Yes, sir.

Q. Now, back to page two and the part I read to you, I don't find any reference to the old contract in that paragraph and I believe your statement is that Mr. Goss didn't make any reference, to your recollection, at that time? A. Well, at this time I don't recall that he did.

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Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

Statement of the Case

Upon charges duly filed by Oil Workers International Union, C. I. O. herein called the Union, the General Counsel, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana) of the National Labor Relations Board, herein called the Board, issued his complaint dated August 11, 1952, against Lion Oil Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), (4), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. Copies of the charges and complaint, and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the Respondent on or about June 21, 1952, and until about August 4, 1952, refused to reinstate striking employees entitled to reinstatement, (2) that from July 16, 1952, until July 30, 1952, the Respondent imposed as an additional condition to the reinstatement of the striking employees the withdrawal of the charges filed by the Union in this proceeding, (3) and that after June 21, 1952, the Respondent refused to

bargain collectively with the Union as the duly authorized representative of its employees. The Respondent duly filed its answer denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on August 26, 27, 28, and 29, 1952, at El Dorado, Arkansas, before the late Trial Examiner Henry J. Kent. The General Counsel and the Respondent were represented by counsel and the Union by representatives. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs. Briefs from the Respondent and the General Counsel have been received.

Because of the death of Trial Examiner Henry J. Kent, the Chief Trial Examiner on January 16, 1953, designated another Trial Examiner to perform the duties and exercise the powers of Trial Examiner in the place of Trial Examiner Kent. On January 30, 1953, the Board, however, acting pursuant to Section 102.36 of the National Labor Relations Board Rules and Regulations, Series 6, as amended, issued an order that the case be transferred and continued before the Board, that the order designating another Trial Examiner be revoked, that no Trial Examiner's Intermediate Report be issued, and that Proposed Findings of Fact, Proposed Conclusions of Law, and a Proposed Order be issued. Pursuant to said Rules and Regulations, any party may, within 20 days from the date of these Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, file exceptions, together with a supporting brief. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions filed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

error was committed. The rulings are hereby affirmed. Under date of September 18, 1952, the Respondent and

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General Counsel submitted a stipulation on corrections to that part of the Official Report of Proceedings dealing with material sections of the contract between the Union and the Respondent which was executed on August 3, 1952. This stipulation has been accepted, and the corrections have been made part of the official record in the case.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the Respondent

Lion Oil Company, a Delaware corporation, has its principal office and place of business in El Dorado, Arkansas, near which it operates its chemical plant. The Respondent is engaged in the refining and distribution of petroleum and petroleum products and in the manufacture and sale of chemical products.

During the calendar year of 1951 the Respondent received raw materials from outside the State of Arkansas valued in excess of $1,000,000. During a similar period the Respondent sold, shipped, and delivered finished products to states other than the State of Arkansas valued in excess of $1,000,000.

We find that the Respondent is engaged in commerce within the meaning of the Act.

II. The labor organization involved

Oil Workers International Union, C. I. O., is a labor organization admitting to membership employees of the Respondent.

III. The unfair labor practices

A. BACKGROUND AND SUMMARY OF EVENTS

On March 23, 1944, the Union was certified as bargaining representative of Respondent's production employees. In June 1947 employees in the labor department were included in the bargaining unit represented by the Union.

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The issues in this case give particular significance to the past relations between the Respondent and the Union. On March 2, 1949, the Union during contract negotiations stated that, if agreement was not reached, the men were going to strike. The parties discussed an orderly shutdown, but no date of the prospective strike was mentioned. However, as the meeting continued with negotiations on the contract, the Respondent instituted a gradual shutdown. The plant was then shut down at the Respondent's request in an orderly manner by the Union members who, however, did not consider themselves on strike and who reported for work. The shutdown lasted for 10 days, during which time new facilities were tied in to the rest of the plant.

On April 21, 1950, the Union did strike over contractual terms. That strike lasted for 8 days. The Union notified the Respondent in advance and offered to have its members shut the plant down, but the Respondent declined the offer and kept the plant in partial operation. The International Association of Machinists, which represents the maintenance employees, went out on a strike which lasted for 35 days in May 1951. The picket line was set up after the day shift had gone to work; but, although the Union recognized the I. A. M. picket line, the day shift employees remained inside and, working a double shift, shut down that portion of the plant which the Respondent did not operate during the strike.

Since August 12, 1946, the date of the first contract between the Respondent and the Union, and prior to April 30, 1952, the date of the strike involved in this proceeding, the parties had executed 5 additional contracts. On August 24, 1951, the Union notified the Respondent and the Federal Mediation

and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modifications of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. The Respondent petitioned for an injunction in the Union County Chancery Court on May 1, 1952; on June 4, 1952, a temporary restraining order was issued, and picketing stopped. On July 2, 1952, the Chancery Court dismissed the petition of the Respondent and the cross-petition of the Union, which alleged that the Respondent had locked out the employees, and on July 3, 1952, the picketing was resumed. On June 21, 1952, the employees offered to return to work and the Respondent refused to reinstate them. Negotiations on a new contract which had been conducted since August 29, 1951, were culminated by the execution of a new contract and a strike settlement on August 3, 1952. The striking employees began to return to work on August 4, 1952, and by August 15, 1952, all employees involved except 4 had returned.

B. DISCRIMINATORY REFUSAL TO REINSTATE

1. The Facts

The last contract prior to the one executed on August 3, 1952, at the time the strike was settled, contained the following provisions with respect to the duration of the agreement:

"Article I

"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

"This agreement may be canceled and terminated by the Company or the Union as of a date subsequent

to October 23, 1951, by compliance with the following procedure:

> "(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following

> the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.
>
> "(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, in accordance with Section 8 (d) of the Labor Management Relations Act, the Union notified the Respondent, Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas that it desired to modify the contract and that a lab dispute existed. The parties met and negotiations began on August 29, 1951. At no time did either the Respondent or the Union notify the other that it was terminating the contract. Throughout the negotiations, which continued after the strike, the Respondent's position was that the strike had breached and thus terminated the contract. In its answer, however, the Respondent states that the contract was still in effect for the entire period beginning June 21, 1952, and ending August 3, 1952.

At the request of the International organization the employees voted on February 14, 1952, to strike. The strike

was first set for March 3, 1952. On February 29, 1952, the Union at a meeting informed the Respondent of the impending strike and discussed with the Respondent whether the latter wanted the Union's members to shut down the plant in an orderly manner or whether the Respondent would arrange to do it otherwise.

On March 6, 1952, the parties met again, and the Union informed the Respondent that the strike had been postponed until March 10, 1952, and that the Union still wanted to know if the Respondent wished the Union members to shut down the plant. The Respondent stated, that, if the men were going on strike, the supervisory personnel would operate the plant. In view of pending Wage Stabilization Board proceedings, the strike was further postponed to

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12:01 a. m., April 30, 1952. During this time there were several meetings between the Respondent and the Union, and at a meeting on April 29, 1952, the Union stated that it was still willing to shut down the plant in an orderly manner. At a Union membership meeting on April 29, 1952, the Union acceded to the Respondent's request for another postponement. On April 30, 1952, the Union membership rejected the Respondent's last contract offer and voted to strike at 11:00 p. m. that day; the Respondent was so notified, and the strike began at 11:00 April 30, 1952. Approximately 613 men went on strike, and the Respondent shut down part of its plant and continued to operate part of it with its supervisory, clerical, and technical personnel.

On June 4 and 5, 1952, E. P. Shelton, officer of the Local and chairman of the Local Bargaining Committee, appeared at the plant gate with three groups of strikers and stated that they had reported to go to work. When Shelton in response to a question from Sprague, plant superintendent, stated that the men would report for work when there was no picket line, Sprague stated that he could not permit them to return under such conditions. The International Association of Machinists, which had been on strike since the expiration of its contract on May 15, 1952, and which

maintained a picket line until June 20, 1952, when it signed a contract with the Respondent, temporarily withdrew its pickets on each of these occasions but immediately resumed picketing when the groups departed. On May 31, 1952, the picket lines of the Union and the I. A. M. had similarly withdrawn to permit a group of approximately 125 men to approach the plant gate without crossing a picket line. After Sprague, plant superintendent, had interviewed approximately 28 of the men and told them that under the operation of the plant at that time he could not put them back to work without advance notice, the group left.

During the strike, negotiations for a new contract (set forth more fully in the section of these findings dealing with the refusal to bargain) continued. At the meeting on June 20, 1952, the Union was assured by the Respondent that none of the strikers had been replaced. On June 21, 1952,

the Union Committee headed by Robert F. Goss, International Representative, met with the Respondent's representatives headed by H. D. Dickens, attorney for the Respondent. Prior to the meeting, according to Goss' testimony, the Union had decided to offer to return to work if there was no way to agree on a contract without acceding to the Respondent's demand for a no-strike clause. Upon being informed by Dickens that the no-strike clause was a "must" item, Goss asked if the "powers-that-be," meaning the Board of Directors of the Respondent, were available. Dickens replied that some of them were; Goss then asked for a recess.

During this recess the Union Committee decided to make its offer to return to work to Dickens, although some of the Committee had doubts as to whether Dickens possessed the authority to make a decision. Goss testified that he understood that previously, when the men had offered to return to work at the plant gate, the "old contract" had been mentioned. Consequently, he suggested to the Committee, and it decided, that he would make the offer and that the other members of the Committee would not

enter the discussion until he had made it clear that the offer was completely unconditional. Goss cautioned the Committee members not to mention the "old contract."

When the meeting reconvened, Dickens stated that he was the "powers-that-be." Goss replied that then his problem was simplified and that he "was offering to return all the strikers unconditionally and wanted to know what schedule they should report on with no strings attached." Dickens asked if Goss meant an unconditional offer, and Goss replied "with no strings attached." The meeting recessed; and, when the parties met again that afternoon, Dickens informed the Union committee that he was authorized to state that the Respondent would not let the employees return until a new agreement had been reached which would include a no-strike clause and the term of agreement provisions which the Respondent wanted. Dickens stated that the strikers could return to work under the old contract if it was amended to include the no-strike clause and term-of-agreement provisions he referred to.

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Goss asked Dickens if he did not consider the old contract in effect, and Dickens replied it was a legal question and he could not answer. Goss, during the meeting, informed Dickens that the Union's offer to return was unconditional and continuing. Dickens advised Goss that the Respondent's refusal to reinstate also was continuing unless the Union was notified to the contrary.

The witnesses both for the General Counsel and the Respondent, were in substantial agreement with regard to the events of the June 21, 1952, meeting as they related to the offer to return to work. There was a conflict, however, as to whether or not Goss' offer was to return to work under the terms of the "old contract." Goss, Young, Whitworth, Moore, and E. P. Shelton, all members of the Union Committee, testified that the "old contract" was not mentioned by Goss when he initially made the offer to return to work. Four of these witnesses also testified that Dickens was the first person to bring up the question of returning to work under the "old contract." During the cross examina-

tion of Shelton, portions of his testimony in the injunction proceeding on July 2, 1952, which indicated that Shelton had testified in that proceeding that Goss had said the strikers would offer their surrender and return to work under the existing agreement, were read to him. He had also testified in the Court proceeding that Walden, General Counsel for the International Union, had advised the Local members to return to work under the existing contract and that pursuant to that advice the Union had attempted to return to work. On redirect examination other portions of Shelton's testimony in the injunction proceeding were read to him which contained statements that if any strings were attached to Goss' offer he, Shelton did not hear them and that he at that time was willing to return to work unconditionally.

J. L. Doughtery, coordinator of labor relations for the Respondent, testified that Goss' offer "as he left it" was to have the men to return to work under the conditions of the old contract. On cross examination Doughtery explained that he had referred to an offer made toward the end of the meeting. At the negotiating meetings which he attended, Doughtery took shorthand notes which he

dictated to his secretary. When these notes were transcribed, they were distributed among the officials of the Respondent. After refreshing his recollection from these minutes Doughtery testified that the minutes accurately stated that "After the recess Mr. Goss stated that the Union offered an unconditional return of all the strikers and asked Mr. Dickens when the Company wanted the employees to return to work . . . He said, 'we are ready and available.' Mr. Dickens stated that that is an operational problem and he couldn't say when they could return. Mr. Goss added, 'The union is not asking an increase in wages or anything else.'" Later on in the meeting, according to Doughtery, after his initial offer was rejected, Goss stated that the employees were individually offering to return to work under the existing contract.

Dickens' testimony regarding the June 21, 1952, meeting was in general agreement with that of the other witnesses. He, however, testified that Goss had said that he was making a unconditional offer for the men to return to work under the existing contract. Dickens, who testified that Doughtery's transcribed shorthand notes of the minutes were distributed among the Respondent's officials, stated that he had received a copy of the notes of the meeting of June 21, 1952, and that, although he had read them about a week or ten days after the meeting, he did not notice any discrepancies in the minutes. He, nevertheless, testified that he thought that Goss had at that point in the meeting stated that the men would return under the "existing agreement."

It thus appears that the witnesses agreed generally on the reinstatement aspects of the June 21, 1952, meeting; and that all the witnesses, including Doughtery, an official of the Respondent, but with the exception of Dickens, concur in the testimony that Goss did not condition the initial offer to return to work upon a continuation of the terms of the "old contract." It further appears that the Union committee specifically intended not to condition its offer to return to work upon the continuation of the "old contract" and attempted, by a committee meeting during a recess, to avoid any possibility of misunderstanding

on that score. The testimony of Dickens in this respect is further put in question by the notes of the meeting which were taken in shorthand by Doughtery, dstributed to the Respondent's officials, and in which Dickens had found no discrepancies although he had read them within 7 to 10 days from the meeting. In view of these factors, we are of the opinion that the testimony of the bargaining committee members most accurately reflects what was said, and accordingly we credit their testimony in this respect.

During the meeting of June 21, 1952, after his initial offer to return to work had been rejected, Goss informed Dickens that the Selective Service Act guaranteed returned veterans one year's work after their discharge and requested that the veterans who had not had one year's work since

returning to the Respondent's employ from the armed forces be permitted to return to work. After another recess, Dickens stated that the veterans should apply to Sprague, plant superintendent, and he would tell them how and when to go to work. A request by Goss for a list of the veterans was rejected, and Goss was told that the union should notify the veterans at a meeting to apply to Sprague.

Following the meeting, for several days many employees, individually and in groups, in person and by telephone, made offers to return to work. They were informed that they would have to speak to Sprague who in many cases was not available. Certain employees, however, were permitted to go to work after June 21, 1952, when they had been individually interviewed by Sprague and had given him assurance that they would stay at work. Several veterans also were taken back at that time.

Goss, under date of June 23, 1952, wrote the Respondent, to the attention of Dickens, in confirmation of his offer of June 21, 1952, to have the men return to work. The letter stated: "As we told you at that time this offer to return to work was unconditional and is a continuing offer." On the same day, over the signature of Martin, the Respondent's president, the Respondent sent a letter to the Union and mailed copies of it to the strikers at their homes. This letter set forth the Respondent's last offer

and the Respondent's reason for insisting on a term-of-agreement provision and a no-strike clause. The letter also contained the statement: "Your union has suggested that the men represented by it be permitted to return to work, in which event the provisions of the new agreement between the Company and the Union could be worked out at a later date." The Respondent then stated in the letter that it could not accede to that suggestion as the union would not agree that the strikers would continue "to work thereafter for any period of time." The letter further stated that: "Therefore, we cannot settle this dispute until such time as the men and women you represent are willing to agree to go to work and continue to work for a period of at

least one year with no strike or other work stoppage during that period."

The nature of the Respondent's operations has particular significance in this case, in view of the Respondent's defense to the charge of having discriminatorily refused reinstatement. The basic product manufactured by the Respondent is anhydrous ammonia, of which the greater part is converted into ammonium nitrate solution, ammonium sulphate, and prilled or pelleted ammonium nitrate. The principal units of the plant are anhydrous ammonia, nitric acid, ammonium nitrate solution, ammonium nitrate pelleting, sulphuric acid and ammonium sulphate. Some of the plant equipment is operated at high temperature and pressures. In the manufacturing process in some of the units, particularly in the anhydrous ammonia section, expensive alloy tubes and catalysts are employed to achieve the proper chemical reactions.

Although the kind of tube used in the production of anhydrous ammonia has been improved, and, when the tubes have to be replaced, seamless tubes will be installed, the tubes now in use are welded. The plant is normally operated on a continuous basis, 24 hours a day every day in the year, and the tubes are kept at a uniformly high temperature. If the tubes are permitted to cool, there is the likelihood that they will break or crack at the welds. When this occurs the catalysts within are destroyed. The same possibility of damage exists in bringing a cooled-off unit to operating temperature. As

illustrative of the damage that may occur, Respondent's officials testified concerning an incident, occurring about one year before the hearing, where damage costing from $175,000 to $200,000 was caused by an operator who made the mistake of cutting the steam out of the reform tubes. The entire plant, including the anhydrous ammonia section, which, when this strike began was shut down to 75 percent of its production, was shut down completely in 1951. At that time 2 tubes were damaged with a cost of approximately $9,000. During the strike involved in this

proceeding 2 tubes in the reform unit were cracked causing between $3,700 and $4,000 damage and $2,400 damage occurred in the nitric acid plant.

On April 30, 1952, when approximately 613 employees went on strike, all of the plant, except 75 percent of the anhydrous ammonia section, was shut down. Supervisory, clerical and technical employees numbering 154 remained on the job. Between April 30 and June 21 they were augmented by 19 other employees making a total of 173 employees operating the plant on June 21, 1952, when the strikers offered to return to work. At that time all sections of the plant, except the sulphuric acid, ammonium sulphate, and pelleting plant, were in operation. According to the testimony of Sprague, plant manager, the 173 employees then at work were producing at a rate which would require 248 employees under normal operating conditions. This was accomplished by having the employees live in the plant and, from April 30, 1952, to May 7, 1952, working on a schedule of 4 hours on, 8 hours off, 4 hours on, 4 hours off, 4 hours on. After May 7, the men were permitted to go home once every three days for 16 hours. The sulphuric acid section started up on June 25, 1952, and the ammonium sulphate, on June 26, 1952. The pelleting plant did not operate until August 4, 1952, the day after the strike was settled.

On June 20, 1952, the Respondent assured the strikers that none of them had been replaced, and after the strike it continued to treat them as employees. Smith, Director of Labor Relations for the Respondent, testified that none of the strikers was discharged. The strikers were paid sickness benefits, employees' credit privileges were extended to them, and, upon

authorization to deduct their contribution to group insurance and hospitalization premiums from wages earned after the strike, the Respondent maintained its own and the employees' contributions to such insurance premiums.

2. The Parties' Contentions

The Respondent urges that the dismissal of the strikers' cross-complaint by the Union County Chancery Court where the strikers alleged damages and sought equitable relief is res judicata as to the claims of the strikers. It also contends that the employees were not entitled to be reinstated, as they had not complied with the clause of the contract which provided that employees on unauthorized absence not due to injury or illness would not be permitted to return to work without 8 hours notice. The General Counsel urges that, although the 8 hour provision was not applicable to a strike situation, nevertheless, the employees did give such notice of their intention to return.

The Respondent urges that a strike during a contract is a violation of Section 8 (d) (4) of the Act: neither party terminated the contract, and, even though the contract did not contain a no-strike clause, the strike during the existence of the contract was an unfair labor practice. The Respondent states that it is cognizant of the Board's decisions to the contrary, but urges the Board not to apply the principles of those cases to a situation where, as here, the strike was called as a part of a nation-wide strike in an industry where there is no history of industry-wide bargaining. The General Counsel relies on the Board's decision in United Packinghouse Workers of America, (Wilson & Co., Inc.), 89 NLRB 310.

It is further contended by the Respondent that, even if the refusal of the Respondent to reinstate the employees on and after June 21, 1952, was a lockout conducted by the Respondent to strengthen its bargaining position, the Respondent had the legal right to take such action. In support of its contentions, the Respondent cites the decisions of the Courts of Appeals in Morand Brothers Beverage Company v. N.L.R.B., 190 F. 2d 576, and Leonard et al. v. N.L.R.B., 197 F. 2d 435. Moreover, argues the Respondent,

its right to refuse to permit the strikers to return until they had agreed to remain at work is approved by the Board's decision in Betts Cadillac-Olds, Inc., 96 NLRB 268. It is urged that the rule of the Betts Cadillac case should be applied here, as neither the Union nor the men would give assurance that they would remain at work for any given time, the offer to return to work was made on the condition that negotiations would continue, the union contended that it had the right to strike under the contract, on June 4, and 5, 1952, Shelton, speaking for 3 groups who reported for work, stated that the men would report to work every time there was no picket line, substantial damage is caused when equipment is shutdown, and the Respondent feared that the men would return and then hold a work stoppage as a threat over the Respondent.

On the other hand, the General Counsel argues that the June 21, 1952, offer to return to work was one which the Respondent had a legal obligation to accept. It was an unconditional offer to return, and, moreover, the written offer 2 days later was also unconditional. However, according to the General Counsel, even if the offer were to go back to work under the contract, it would still create an obligation to reinstate, as the Board has held that an offer to return need only to seek a return to the status quo preceding the strike, (Seven-Up Bottling Co., 92 NLRB 1622, 196 F. 2d 424, and E. A. Laboratories, Inc., 80 NLRB 625) and a condition that contract negotiations continue is not such a condition as will vitiate the offer. Further, argues the General Counsel, as the Board held in Morand Brothers Beverage Company, 99 NLRB No. 55, the Respondent may not resort to a lockout in order to support its contractual demands, and, moreover, the lockout was in reprisal for the Union's going out on strike and was motivated by a desire to interfere with concerted activity, in that the Respondent conditioned reinstatement upon an abandonment of the right to strike for one entire year.

The General Counsel would distinguish this case from Betts Cadillac-Olds Inc., 96 NLRB 268, and International Shoe Company, 93 NLRB 907. In.

the present case, urges the General Counsel, there is no history of quick strikes without notice and no threat of another strike, so consequently the Respondent has no substantial and reasonable cause to believe that another strike was intended. In this case there is no danger that the Respondent would suffer undue hardship caused by a strike without adequate notice.

3. Conclusions as to the Refusal to Reinstate

The Respondent's contention that the Board is precluded from considering the claims of the strikers by reason of the dismissal of their cross-petition by the Union County Chancery Court we find to be without merit. The Board has paramount initial jurisdiction over the subject matter herein; nor was the Board a party to the injunction proceeding before the Chancery Court. Furthermore, the present proceeding is not one to adjudicate private rights, but is a proceeding to effectuate the public policy set forth in the National Labor Relations Act, as amended. (H. N. Thayer Co., 99 NLRB 1122; United Shoe Machinery Corp., 96 NLRB 1309, at 1325; and De Luxe Motor Stages, 93 NLRB 1425.)

The Board likewise finds without merit the Respondent's contention that the employees were not entitled to reinstatement, because they had not given 8 hours notice of intention to return to work in accordance with the provision of the contract which required such notice after unauthorized absence not due to injury or illness. We do not believe that such a provision is applicable to the particular circumstances of a strike situation and a request for reinstatement, such as present in this case. In any event, however, it is apparent from the record that such notice was in fact given by the Union to the Respondent.

As indicated above, on August 24, 1951, the first date when it could have done so under the contract, the Union notified the Respondent of its desire to modify the contract and informed the Federal Mediation and Conciliation Service and the State Labor Commissioner for the

State of Arkansas of that fact and of the existence of a labor dispute. The strike did not take place until April 30, 1952. Under the principle of United Packinghouse Workers of America (Wilson & Co., Inc.), 89 NLRB 310, the requirements of Section 8 (d) of the Act have been met, and the Board accordingly, rejects the Respondent's contention that the Union has failed to comply with Section 8 (d).

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With respect to the issue of whether or not the Respondent was justified in refusing to reinstate the strikers, the General Counsel relies on the Board's decisions in Morand Brothers and Davis Furniture, and the Respondent cites the decisions of the Courts of Appeals in those cases. The Respondent, further, would have the Board decide the case in its favor in light of Betts Cadillac; the General Counsel urges that Betts Cadillac and International Shoe are inapposite.

In our opinion, the facts of the present case require the Board to distinguish this case from those relied on by both the General Counsel and the Respondent.

Morand Brothers involved a discharge of, and Davis Furniture involved a temporary lay-off of, employees by members of the association to which the struck employers belonged and through which they bargained.

The Betts Cadillac case also concerned a shutdown by members of an association when two of the members were struck. In that case the Board affirmed the Trial Examiner's recommendation that the complaint be dismissed. The operations of the employers involved in that proceeding were the repair and servicing of automobiles. Ninety-five percent of this work was completed the same day it was received. The threat of strike was present, and no assurance was given by the Union that the association members not already struck would be notified, before an extension of the strike to their operations, in time to finish the work in the shop.

In International Shoe, (where a majority of the Board dismissed the complaint) which more closely approaches the present case than the cases referred to above, the parties had agreed on a contract including a maintenance-of-membership clause, but the local union, although it had ratified the contract, deferred signing the agreement until it had been approved by the international union. At the time the employer was signing the agreement, a work stoppage occurred for the purpose of forcing non-union employees to join the union. This stoppage disrupted other departments of the plant. The same morning, the union notified the employer that the third shift employees in one of the departments would not report for work that day unless two employees working

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there joined. The employer thereupon told the union that it would no longer agree to the maintenance-of-membership provision in the contract. When the third shift employees failed to report, the employer shut down the plant, which remained closed until a new contract was executed. Three days after the plant was closed, the union stated that the employees were willing to return under conditions existing at the time of the shutdown. The employer, however, aware of the union's coercive intent in instigating the quick work stoppages, refused to open the plant until the union had signed a contract containing a no-strike clause and an escape clause permitting resignations from the union of those who had joined after a certain date. The latter provision was intended to counteract the effect of the coercive tactics used by the union in recruiting membership.

In the present case, it is our opinion that the Respondent was not justified in refusing to reinstate the strikers until the Union signed a contract with a one-year no-strike clause and for a fixed one-year term without an automatic renewal clause.

It has been established for many years (N.L.R.B. v. Mackay Radio & Telegraph Co., 304 U. S. 333) that economic strikers who have not been replaced are entitled

to reinstatement upon their unconditional request. It is clear that here the strikers were not replaced and that they made an unconditional request to return to work. Even if, as contended by the Respondent, the request were made subject to continuation of negotiations and the terms of the existing contract, which had not been terminated, such "condition" would not be objectionable as it asked only that the Respondent do that which it was legally bound to do and to return to the situation which existed at the time the strike began. (See Seven-Up Bottling Company of Miami, 92 NLRB 1622, enf'd by the Court of Appeals for the Fifth Circuit in 196 F. 2d 424, and E. A. Laboratories, 80 NLRB 625)

The two principal grounds urged by the Respondent as justification for its refusal to reinstate the strikers are the nature of its operations and its fears of recurrent strikes without due notice within a short time. These factors are argued as the bases for its insistence in not permitting.

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the employees to return until the Union agreed to relinquish the right to strike for one year and to execute what the Union termed a "sudden death" contract, i. e., one which would definitely expire on a certain date without any provision for automatic renewal or continuation beyond the one-year term.

In connection with the nature of the Respondent's operation, the record shows that, because of the temperatures and pressure under which some of the equipment operates, there is a likelihood of damage in both shutting down the plant and starting it up again. As indicative of that fact, damage to the equipment costing approximately $6,400 occurred during the strike.

In our opinion, however, under the circumstances of this case, the Respondent has not proved a case of misconduct by the Union, delinquency by the employees in their obligations to the Respondent, or undue hardship to the Respondent. We are aware, of course, that almost all, if not all, strike situations cause some detriment of various

kinds to the parties involved, but, in our opinion, that alone is not sufficient to deny to the strikers their statutory right to reinstatement under the conditions of this case.

The damage to the Respondent's equipment and the probability of damage appear to be comparatively negligible in relation to the value of the plant, the large volume of business done by the Respondent, the loss of sales to customers during a complete shutdown, and the damage to equipment possible during full normal operation of the plant when there is no strike. Thus, it was estimated by a responsible official of the Respondent that the replacement value of the plant is $55,000,000; the complaint alleged, and the Respondent admitted, that the Respondent during the calendar year of 1951 received raw material from outside Arkansas in excess of $1,000,000 and sold, shipped and delivered finished products to other states valued in excess of $1,000,000; and, that, as testified by Respondent's officials, a mistake by one operator about one year before the strike resulted in damage costing from $175,000 to $200,000. The Respondent's decision to operate as much of its plant as possible with its supervisory, clerical, and technical employees was motivated by its desire to minimize its loss in sales as well as to protect the equipment. It further appears from the record that one part of the

equipment (alloy tubes) most likely to fail has been improved, and, when it is replaced, the danger of damage in this respect will be greatly diminished, if not removed. The record also clearly shows that the Union has been most meticulous in its concern over minimizing the possibility of damage each time there has been a strike at the plant.

Further, in support of its contention that it had the right to refuse reinstatement until the strikers agreed "to remain at work," that is, until the Union agreed to forego the right to strike for one year, the Respondent relies on the facts, proved in the record, that the Union claimed the right to strike under the contract, that the Union re-

fused to agree not to strike for a one-year period, that several groups of strikers on June 4 and 5, 1952, stated that they would work when there was no picket line, and that the Union had, in fact, gone out on strike. The Respondent would further justify its refusal to reinstate upon fears expressed by its officials that the men would return to work and then hold a work stoppage as a threat over the Respondent.

It is our conclusion, however, that the Respondent's expressed fear of another strike within a short time was not based on the realities of the situation. The Respondent, itself, admitted that it had no criticism of any notice that the Union gave of its intention to strike, that it had not received any notice or threat from the Union or any source to support its fears, and that the only reasons for its premonition were those enumerated in the preceding paragraph.

The record amply demonstrates that the Union, in this and other previous strike situations at the plant, displayed the utmost concern that undue hardship should not be incurred by the Respondent, by giving the Respondent full and sufficient notice and offering to conduct the shutdown in an orderly manner at the direction of the Respondent. The record also shows that in the course of contract negotiations during the strike the Union by its proposals gave positive evidence, not only that it did not intend to go out again within a short time, but that, in fact, it was willing to forego its right to strike for certain periods of time, albeit short

of the one-year period sought by the Respondent. Thus, on June 26, 1952, the Union offered to refrain from striking until the grievance involved in any dispute had gone through four steps of the grievance procedure, a process which was estimated to take from one to four months. On July 3, 1952, as a counterproposal to the Respondent's offer that the no-strike clause be inoperative after 10 consecutive unsuccessful discharge appeals, the Union suggested that the number of unsuccessful appeals be set at five. Likewise, on July 11, 1952, the Union proposed a no-strike

provision under which, if, after 60 days of negotiations, agreement was not reached, the Union would be free to strike.

On June 21, 1952, and the following days, the Respondent individually interviewed striking employees and reinstated them upon their assurance that they would not strike. This was done at a time when the Respondent unlawfully rejected the Union's attempts to get the employees back to work and when the Respondent declined to deal with the Union on grievances. In our opinion this conduct constitutes discrimination violative of the Act, as it required the employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this respect and to return as individuals after personal interviews and not as a group.

In the circumstances of this case we find, therefore, that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint and by individually interviewing the strikers and reinstating them upon their assurance that they would not strike at a time when the Respondent rejected the Union's attempts to get the strikers back to work and declined to deal with the Union on grievances.

C. THE REFUSAL TO BARGAIN

1. The Facts

The facts with regard to the bargaining conferences are, in the main, undisputed. On August 24, 1951, the Union, under the terms of the

contract in existence at that time, notified the Respondent that it desired to modify the agreement and specified 34 provisions of the contract which it desired to amend. Meetings began between the Union and the Respondent on August 29, 1951, and between that date and April 30, 1952, the date the strike began, 37 bargaining sessions were held. Between April 30, 1952, and August 3, 1952, when the strike was settled and the new contract executed, the

tract opening clause be retained which had been in the contract in effect at the time of the strike. Near the conclusion of the meeting the Union asked the Respondent if it would submit a list of "just what it would take to reach an agreement."

At the May 21, 1952, meeting the parties reviewed the negotiations up to that time. At the suggestion of the Federal Conciliator who was present the two committees met with him separately. After meeting with the Respondent's representatives, the Conciliator presented the Union committee with a written list submitted in response to the Union's request at the meeting of May 20, 1952. After the committee members had read the list, the union asked the Conciliator if he could get the Respondent to sign the proposal. The Conciliator did not know, and after going into the room in which the Respondent's representatives were meeting, returned, took back the written proposal of the Respondent from the Union, and went back into the room where the Respondent's representatives were. He later returned and stated that the Respondent would not sign the proposals. When the Union requested a copy of the proposals, the Conciliator, after conferring with the Respondent's representatives, stated that if he got one for himself, it would

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not be available to the Union. When the Respondent and Union convened together as part of this meeting, the Respondent refused to give the Union a copy of the proposals, and Smith told the Conciliator that the two "absolute musts" were the Union's agreement to the no-strike clause and to the term of agreement provision. Although throughout the hearing the latter clause was referred to as the "July 1 termination date," it is apparent from the record that a July 1 expiration date for the initial term of the contract was not the issue, for the Union did not object to having the contract run from July 1 to July 1. Its objection was to the Respondent's proposed deletion of a clause for renewal in the absence of notice to terminate.

At the meeting of May 29, 1952, the parties reviewed the negotiations, but there was no change of position.

Again the Respondent stated its position that the two "fundamental" items were the no-strike clause and the termination date. On May 30, 1952, the Union wrote the Respondent's Board of Directors and protested that the Respondent's representatives had not been given authority to negotiate a contract to a conclusion, set forth the areas of dispute (term of agreement, no-strike clause, pay in lieu of notice on layoff, withdrawal by Respondent of agreement to upgrade certain classifications and to liberalize employees' benefits plans, and wage increases) the Union's position on these areas of dispute, and requested a meeting with the Board of Directors.

By June 13, 1952, the points in issue were increased by the Union's demand for the payment of the wage increase allowable under Wage Stabilization Board regulations without prior approval, from December 27, 1951, to April 30, 1952, the time the strike began. There was another meeting on June 14, 1952, at which the Respondent again explained that it wanted the contract to expire definitely on July 1, the same day that its contracts for the sale of fertilizer ended. The Union agreed to the July 1 date but proposed that reopening, modifying, notice to terminate, and automatic renewal on that date should also be provided for by provisions for reopening 120 days before July 1 and the giving of notice of termination 60 days before July 1. The

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Respondent rejected this proposal.

On June 16, 1952, Smith, who became ill, was replaced by Dickens as spokesman for the Respondent's representatives. The Respondent offered in writing a termination provision, an interpretation of which was requested by the Union of Dickens, who found it necessary to go into recess before he could reply. On June 17, 1952, the parties reached tentative agreement on a pay in lieu of notice clause. The Union asked the Respondent to give it the Respondent's best offer not containing a no-strike clause which the committee could take to the Union membership in an effort to settle the strike. Dickens replied that the

Respondent "still had two fundamentals that they had to have," the no-strike clause and the termination provision, and had no proposals to offer which would not contain both those items. On June 18, 1952, Dickens stated that the Respondent would not sign any kind of a contract unless it contained both these clauses.

The parties met again on June 20, 1952. The Union was still willing to accede to the Respondent's demand for a July 1 termination date, but it still wanted a 60-day period for notification of desire to modify and a 60-day period in which notice to terminate would be permitted. The Union representative, Goss, asked Dickens, if the Union accepted the Respondent's proposal on the term of agreement, would the Respondent withdraw its demands for a no-strike clause. Dickens replied in the negative, to the effect that a contract acceptable to the Respondent would have to contain both provisions.

The events of the June 21, 1952, meeting relating to the offer to return to work and the refusal to reinstate are treated under that section of these proposed findings. The meeting also dealt with the contract proposals of the parties. As recited elsewhere, the Union questioned Dickens' authority, but upon Dickens' assurance that he was the "powers that be" to negotiate a contract, it tendered him its offer to return to work. Dickens' reaction indicates clearly that he was not empowered, at least, to reject or accept the Union's offer to end the strike. During the early part of the meeting there was a discussion of the no-strike clause. Goss asked Dickens,

if the Union could trade agreement on the termination clause for the Respondent's withdrawal of the no-strike clause. Goss and E. P. Shelton testified that Dickens replied that he did not think so, and in reply to this specific question, stated that the no-strike clause was a "must" item. Dickens testified that Goss had asked if the Respondent had an offer to make that did not contain a no-strike clause, that he had replied in the negative, that he asked Goss to make an offer containing such a clause, and

that Goss said that he had no such offer to make. Dickens, however, confirmed the accuracy of the minutes of the meeting prepared by Doughtery, (The preparation and use of these minutes at the hearing are discussed fully in the section of these proposed findings regarding the refusal to reinstate.) which reported that in reply to Goss' direct question, Dickens stated that it was the Respondent's position that a no-strike clause was a "must" item. At this meeting Dickens stated that "his instructions were that the company cannot put the employees back to work until we have an agreement and that agreement will include a no-strike clause and termination date of July 1." Goss asked Dickens for several items of information including a list of all employees working, of the jobs that were filled, a statement of whether there were any supervisors working, a statement of how the Respondent desired the employees to comply with the grievance procedure under the contract, and a list of all veterans who had not had one year's work since their return from the armed forces. Goss also requested a meeting on grievances for the next day; in view of the Respondent's refusal to reinstate, the Union was requesting two weeks pay in lieu of notice of layoff under the "old" contract. After a recess, requested by Dickens, Goss' requests were denied. The Respondent also declined to entertain any grievance on the ground that the contract was not in effect. On June 23, 1952, the Union sent a written request for a grievance meeting to Martin, the Respondent's president.

Meinert, Respondent's vice-president, entered the negotiations on June 25, 1952, when the Respondent withdrew its alternative proposals and

agreed to the 15 cents per hour increase with 6 cents and 12 cents shift differentials (which the Wage Stabilization Board was approving in other cases), to grant a seventh holiday, and to return to its previous agreement on classifications, insurance, and annuities. The Respondent rejected the Union's request for retroactive pay and continued to adhere to its demand for a no-strike clause and the termination clause without provision for automatic

renewal. These 3 items were the principal differences which remained in issue. On June 26, 1952, the Respondent stated that the "old" contract was not in effect, that it would not consider the grievances of the employees under that contract if presented by the Union, but would entertain grievances from individual employees. The Union offered to accept a no-strike clause provided that the fifth step of the grievance procedure be eliminated and further provided that, after a grievance had gone through the fourth step of the grievance procedure without settlement, the no-strike clause would be inoperative. The first four steps of the process would take the grievance through the foreman, plant manager, plant superintendent, and the Director of Industrial Relations; the fifth step would be arbitration. It was estimated that it would take from 1 to 4 months for a grievance to go through the 4 steps. The Respondent rejected this proposal. On July 3, 1952, the Respondent proposed that the no-strike clause be inoperative if the Union lost 10 successive discharge cases processed through to a special appeal to the Respondent's president or vice president. The Union suggested 5 successive discharges, but that was not acceptable to the Respondent. Nor was the Union's proposal that the no-strike clause be inoperative if an arbitrator in a grievance proceeding held that the Respondent had violated the contract.

In response to the Union's request to meet with the Respondent's Board of Directors, the Chairman of the Board (Barton) and the Respondent's president (Martin) met with Goss aud Marsh on July 3, 1952. During this meeting Barton stated that, when the strike was over, the top personnel would do all they could to avoid any future trouble and asked the Union's reason for opposing a no-strike clause. He was informed that the employees worked with the lower levels of management and were fearful that, if a no-strike clause was put into

the contract, the lower levels of management would take advantage of the strength that would give the Respondent. Barton then told the Union representatives that "We are

going to insist on one thing and that is you sign a contract with a no-strike clause in it. . . . . We may have to go to extreme measures to sign that kind of agreement with you. . . . We are going to insist you sign a no-strike clause contract." The nature of the "extreme measures" was not explained.

On July 11, 1952, the Union again met with Meinert and proposed a no-strike provision under which, if, after 60 days of negotiations, agreement was not reached, the Union would be free to strike. The Respondent's representatives stated that it wanted a no-strike contract for a full year's duration and that the Union's proposal was for a contract for only 60 days. The Union further requested the Respondent's reaction to an agreement whereby the Union would accept the Respondent's term of agreement proposal, i. e., one without an automatic renewal or continuation provision, for the Respondent's acceptance of a clause providing that there be no strike unless sanctioned by a vote, under secret ballot, of 75 percent of the employees in the bargaining unit. This proposal was rejected at a meeting held the next day on July 12, 1952.

At the July 11 meeting, the withdrawal of unfair labor practice charges which had been filed with the National Labor Relations Board was discussed, and Respondent informed the Union that it expected the Union to withdraw the charges. With respect to the same subject, the dropping of the charges, Shelton, Young, and Whitworth, members of the bargaining committee, testified that on July 16, 1952, Meinert stated that Respondent "would not even sign this type of a no-strike clause unless we would drop all charges pending with the NLRB and file no charges in the future out of anything that happened during the strike," that, as the Union would not withdraw the charges, "we can't make an agreement then," and that "there wouldn't be a contract unless we did drop the NLRB charges." Meinert stated that the minutes of the meeting

prepared by Doughtery and discussed earlier in these findings were incorrect when they stated that, "Mr. Goss said

parties held approximately 27 additional meetings. From August 29, 1951, to June 13, 1952, the Respondent's representatives were led by Smith, Director of Industrial Relations. When he became ill, Dickens, one of the Respondent's lawyers became spokesman for the Respondent. Meinert, a director and vice-president of the Respondent, conducted the negotiations through the period of June 25, through July 17. Meinert suffered an injury to his leg on July 6, 1952, but held three or four meetings in his room at the hospital, after which he was unable to continue with the conferences. Negotiations were concluded by Davis, Respondent's counsel and a director of the company. On June 29, 1952, at the Union's request Meinert addressed a Union membership meeting and explained the Respondent's reasons for its proposals at the bargaining conferences. On July 3, 1952, at the Union's request, Barton, chairman of the Respondent's Board of Directors and T. M. Martin, president of the Respondent, met with Goss, International Representative of the Union, and Marsh, local member of the bargaining committee. Martin also attended a meeting preceding the strike on April 30. During the negotiations the Union committee was headed by 4 different international representatives and a member of the local bargaining committee who was authorized to act as an international representative.

By February 1952 when the Union took its strike vote and notified the Respondent of its intent to strike, the parties, who had been negotiating since August 29, 1951, had still not reached agreement on wages, shift differentials, paid holidays, certain classifications, sickness benefits,

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clothing allowance, and a pay in lieu of notice provision. Immediately before the strike, a series of meetings was held on April 28, 29, and 30; there had been no agreement on the questions which were still in issue in February. At the April 28 meeting the Respondent for the first time stated that it wanted a no-strike clause in the contract. At the April 29 meeting the Respondent revised its wage offer, and the Union cut down the amount of the wage in-

crease which it requested. At the beginning of the afternoon meeting on April 30 (There apparently were meetings in the morning and night also on April 30) the Respondent requested a revision of the pay in lieu of notice clause and the no-strike clause. Later in the meeting the Respondent increased its wage offer 2 cents an hour and stated, that, if the Union would accept the Respondent's revision of the pay in lieu of notice clause, it would withdraw its request for a no-strike clause. The Respondent's offer was rejected by a membership meeting of the Union, and the strike began at 11:00 that night.

During the strike negotiations continued. On May 20, 1952, the Respondent made alternative proposals. Under one of them, the Respondent offered a wage increase of 15 cents an hour and 6 and 12 cents shift differentials. It also agreed to a seventh paid holiday but withdrew previous proposals which had been agreed to by the Union regarding group insurance and annuities and certain classification upgradings. The alternative proposal contained 13½ cents an hour wage increase, 6 and 12 cents shift differentials, and the insurance and annuities previously agreed to, but no seventh holiday. Both proposals contained a no-strike clause and a revision in the provision for the duration and termination of the contract, which also provided for a July 1 termination date. This revision read: "This agreement shall remain in full force and effect from the date of its execution until 12:01 a. m.

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July 1, 1953." The record does not show that a revision of the termination provisions had been proposed before this date, and a witness who testified regarding this meeting did not recall that there had been a discussion of a termination provision previously. The Respondent informed the Union that the Respondent's contracts for the sale of fertilizer ran from July 1 to July 1 of the next year, and it wanted its labor contracts to have the same anniversary date. The Union did not oppose changing the anniversary date to July 1, but it did oppose having the contract definitely end on a certain date without provision for renewal, and it urged that the same kind of con-

the Union would not drop them and Mr. Meinert replied that we won't settle." He did, however, recall that in effect he had stated, as quoted in the minutes, that he did not think the Respondent would sign a contract unless the Union dropped the unfair labor practice charges. In view of the testimony of the 3 members of the bargaining committee, the minutes of the meeting prepared by an official of the Respondent, and Meinert's testimony itself, despite his denial that he said the Respondent would not settle without the withdrawal of the charges, we believe that the testimony of Shelton, Young, and Whitworth gives a more accurate account of this incident, and we credit them in this respect. Accordingly, we find that at the meeting of July 16, 1952, Meinert conditioned the signing of a contract upon the withdrawal by the Union of unfair labor practice charges pending before the Board.

Also at the July 16, 1952, meeting, there was discussion about how the men who were returning to work did it, and how the other strikers were going to get back to work. Meinert stated that the men were returning on their own initiative, but that the Respondent would not let the entire group of strikers back until the contract was signed.

On July 12, 1952, the Respondent had submitted a list of 11 points for the settlement of the strike; two of the points were the withdrawal of the pending charges and the withdrawal and waiver of any grievances which occurred during the strike. The first of these demands were withdrawn by Respondent on July 30, and the second on July 31, 1952.

On August 3, 1952, the contract was executed by the parties. With respect to the term of the agreement, the significant changes are that the initial term of the contract runs from August 3, 1952 to June 30, 1953, and instead of a minimum 60 days notice of termination, the new agreement provides that the contract will terminate 48 hours after the notice to terminate. The 60 days notice to amend remains essentially the same, and the contract continues in effect until cancelled as described above. The new contract

contains a no-strike, no-lockout clause on matters arising out of disputes which can be referred to arbitration under the agreement, or relating to a wage, wages, and the discharge of a person without seniority. Under the terms of the contract, the no-strike, no-lockout clause is to be rendered inoperative upon the failure of the Respondent to comply with the decision of the arbitration board.

2. The Parties' Contentions

The General Counsel contends that the Respondent violated Section 8 (a) (5) by its adamant position on the no-strike and term of agreement clauses, interjected into the bargaining conferences after substantial agreement had been reached on many items, by failure to give Dickens sufficient authority to permit him to make commitments, by dealing with individual strikers as to reinstatement while refusing to discuss the matter with the Union, by refusing to furnish the information requested by the Union at the June 21 meeting, and by conditioning the reinstatement of the strikers and the signing of an agreement upon the withdrawal of the unfair labor practices charges in this case. The General Counsel also contends that the Respondent's conduct in refusing to recognize that the contract was in effect and to permit the union to administer it during the strike is an illegal refusal to bargain. Although during the negotiations the Respondent contended that the contract in effect at the time of the strike, April 30, 1952, was no longer in effect, in its answer to the complaint in this case, the Respondent has alleged that the contract was in full force and effect for the entire period of June 21, 1952, through August 3, 1952.

The Respondent urges that its insistence on a no-strike clause and termination date was not violative of 8 (a) (5) —that bargaining for such clauses is not per se violative— that at all times it was properly represented at the meetings, that it had the right to refuse to permit workers to return to work until they agreed to remain at work, and that the Respondent's attempt to get the Union to withdraw the NLRB charges as part of

the strike settlement was not a failure to bargain as it was not made as a condition precedent to concluding an agreement and as it did not prevent a settlement.

3. Conclusions as to the Refusal to Bargain

On March 23, 1944, the Union was certified by the Board as bargaining representative of the Respondent's production employees with certain exceptions. On August 12, 1946, the Union and the Respondent executed their first contract for employees of the operating department and the chemical laboratory. In June 1947 the labor department employees were included in the contractual bargaining unit. The contract in the record, which was in effect at the time of the strike, describes the unit for which the Union was recognized by the Respondent as bargaining representative. In substance the parties do not now challenge this unit.

It is found that the following employees of the Respondent at its Chemical Plant at El Dorado, Arkansas, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act: All production, chemical, and operating employees and all janitors, porters, maids and laborers, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and all supervisors, as defined in the Act.

The Respondent's answer to the complaint admitted that the Respondent has recognized the Union as the exclusive bargaining agent, and it does not now challenge the Union's majority status. The complaint alleged, and we find, that at all times material hereto a majority of the employees in the unit above found appropriate, designated or selected the Union as their representative for the purposes of collective bargaining.

The first question to be considered in connection with the allegation that the Respondent unlawfully refused to bargain is the Respondent's position with respect to its demands for a no-strike clause and a contract without an automatic renewal clause.

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On April 28, 1952, approximately 8 months after negotiations began, 2 months after the employees notified the Respondent of their intention to strike, and 2 days before the strike, after several postponements actually occurred, the Respondent for the first time stated that it wanted a no-strike clause in the contract. On May 20, 1952, the Respondent for the first time insisted on a contract without an automatic renewal clause. After these dates the Respondent stated that it would not sign a contract, settle the strike, or permit the strikers to return to work unless the Union agreed to these provisions.

Under certain conditions the Board would, and has, found conduct similar to that described above to be one of the elements evidencing bad faith in bargaining relations (See Tower Hosiery Mill, Inc., 81 N. L. R. B. 658). An analysis, however, of the proposals, counterproposals, and the final agreement on the two issues primarily in dispute, made during, and reached after, a course of bargaining which included approximately 64 meetings in approximately eleven months, indicates that, despite the Respondent's position, there was a "give and take" during the negotiations, and the Respondent's insistence upon its demands was not such as to evidence bad faith.

Nor do we find Dickens' status as Respondent's representative from June 16 to June 25, 1952, indicative of bad faith. We do not believe it necessary to determine whether or not Dickens had been invested with authority sufficient to make him a ger ne representative for negotiating purposes. The period during which Dickens was the principal spokesman for the Respondent—June 16 to June 25—when viewed in the total picture of the numerous bargaining conferences, is negligible in contrast. Furthermore, the record shows that at all other times the Respondent was represented by responsible officials of the Respondent and that each change of representative, except the replacement of Dickens, was occasioned by illness. Thus, Smith, Respondent's Director of Industrial Relations, led the Respondent's representatives from August 29, 1951, to June 13, 1952, when he became ill and was replaced by

Dickens, one of the Respondent's attorneys. Meinert, a director

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and vice-president of the Respondent, who succeeded Dickens, was forced by a personal injury to withdraw after conducting several conferences in the hospital to which he was confined. His successor in negotiations was Davis, Respondent counsel and a director of the company. On other occasions the Respondent's president and Respondent's chairman of the board of directors also met with Union representatives.

The Board does, however, find violations of Section 8 (a) (5) in (1) the Respondent's dealing with individual strikers at a time when the Union had abandoned the strike by offering the unconditional return to work of the strikers and the Respondent had refused to deal with the Union on the matter; (2) the Respondent's conditioning of the signing of an agreement upon the withdrawal of the unfair labor practice charges in this case; and (3) the Respondent's refusal to recognize that the contract was in effect, not having been terminated, and to permit the Union to administer it during the strike.

The record is clear that the Respondent refused to discuss, beyond a flat rejection of the Union's offer of the return to work of the strikers, the Union's request for reinstatement and that it also informed the Union that it would not permit the Union, in performance of its obligations as bargaining representative, to present grievances for the strikers. During this time, however, the Respondent did individually interview strikers and, upon securing certain agreements from them, permitted them individually to return to work. The Respondent also informed the Union that, although it would not consider the grievances of the employees, if presented by the Union, it would entertain grievances from individual employees. We view this conduct as bypassing the Union in derogation of the Union's status as exclusive bargaining representative, and thus it constitutes a refusal to bargain in violation of the Act.

The record is equally clear that the Respondent made the withdrawal of the unfair labor practice charges a

condition precedent to the signing of an agreement. The initiation of unfair labor practice proceedings does not

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suspend the operation of the Act; nor does it relieve the Respondent of the duty to bargain. As the Court of Appeals for the Fourth Circuit declared in Hartsell Mills, the Respondent "could not thus make its compliance with the act dependent upon dismissal of charges that it had been guilty of violating it." We, therefore, in accordance with well established policy (See American Laundry Machinery Company, 76 N. L. R. B. 981, The Toledo Desk & Fixture Co., 75 N. L. R. B. 744, and Hartsell Mills Company, 18 N. L. R. B. 268, enf'd. as modified in 111 F. 2d, C. A.-4.) find that this conduct also violated Section 8 (a) (5) of the Act.

Finally, there remains for consideration the Respondent's repeated denial that the last contract before the one executed on August 3, 1952, was still extant after April 30, 1952, the date of the strike, and its refusal to permit the Union to administer the contract. Under the terms of the contract, as neither party had given the notice of termination provided for, the contract remained "in full force and effect;" the strike of April 30, 1952, did not breach or terminate the agreement.

It is true that the Board will not find a violation of a contract to be an unfair labor practice. The Board's reasons for that policy are given in United Packinghouse Workers of America (Wilson & Co., Inc.), 89 N. L. R. B. 310 at 317. We, however, do not view the Respondent's conduct in this respect as a mere breach of contract; it goes to the fundamental concept of the Union's status as bargaining representative of the Respondent's employees. Under the circumstances of this case, the Respondent had a statutory obligation to recognize the Union as the exclusive bargaining representative and to permit the Union to function as such. To deny the Union recognition as the exclusive agent under the contract and to frustrate its performance as such bargaining agent constitutes, in our opinion, a failure by the Respondent to fulfill its statutory duty to bargain under Section 8 (a) (5) of the Act.

We also find that, as the Respondent's conduct constituted a failure to bargain, it thereby interfered with, restrained, and coerced the Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (a) (1).

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D. ALLEGED VIOLATION OF SECTION 8 (a) (4)

The General Counsel contends that the demand by the Respondent that the unfair labor practice charges in this case be withdrawn as a condition to a strike settlement and the execution of an agreement also violated Section 8 (a) (4) as well as Section 8 (a) (5), in that at the same time, the Respondent refused to reinstate the strikers until a settlement and contract were agreed to, thereby discriminating against the strikers because of the charges filed in their behalf. The General Counsel further contends that discrimination against employees because of charges filed by a union on their behalf will support a Section 8 (a) (4) complaint.

The Respondent interposes the same defenses against this allegation as it does against the charge that the same conduct constitutes a violation of 8 (a) (5), that is, that the demand was not a condition precedent to concluding an agreement and that such a request is not an unfair labor practice if it does not prevent a settlement. In addition, the Respondent urges that Section 8 (a) (4) applies only to an individual employee who has filed an unfair labor practice charge or who has given testimony in a Board proceeding.

As the Respondent's demand that the charges be withdrawn was retracted approximately 14 days after it was made and as the policies of the Act will as well be effectuated by a remedial order based upon a finding that the Respondent in this case violated Section 8 (a) (3) of the Act, we find it unnecessary to determine whether or not the Respondent also violated Section 8 (a) (4).

IV. The Effect of the Unfair Labor Practices Upon Commerce

The Board finds that the activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening or obstructing commerce and the free flow thereof.

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V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which will effectuate the policies of the Act.

It has been found that the Respondent discriminated in regard to the tenure of employment of their employees by refusing them reinstatement from June 21, 1952, to August 3, 1952. Although these employees were offered reinstatement on August 3, 1952, they are entitled to reimbursement for working time lost as a result of the discriminatory action. The Board will therefore order the Respondent to make whole each of its employees for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned in such position, from the date of the discrimination against him to the date of his reinstatement, less his net earning during said period. The back pay shall be computed in the manner established by the Board, and the Respondent shall make available to the Board, upon request, payroll and other records to facilitate the checking of the back pay due. (F. W. Woolworth, 90 NLRB 289)

It has also been found that the Respondent by certain conduct violated Section 8 (a) (5) and (1) of the Act. We shall order that it cease and desist from such activities. However, under the circumstances of this case, we do not believe that an affirmative order to bargain is necessary; we shall, therefore, omit such bargaining order.

Upon the basis of the above findings of fact and upon the entire record in this case, the Board makes the following:

Conclusions of Law

1. Oil Workers International Union, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees who went out on strike on April 30, 1952, whose names are

listed in the complaint herein, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at the Respondent's Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Oil Workers International Union, CIO, was on April 30, 1952, and at all times since has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Sec-

tion 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union,

CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such

right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the complaint herein for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section above entitled, "The Remedy";

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A."[1] Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken

by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated against its employees in violation of Section 8 (a) (4) of the Act.

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[1]If this Order is enforced by a decree of a United States Court of Appeals the attached notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" in the caption, the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

Signed at Washington, D. C.

John M. Houston, Member
Ivar H. Peterson, Member
(Seal) National Labor Relations Board

ABE MURDOCK, MEMBER, dissenting:

I am unable to agree with the majority of this panel that the strike of April 30, 1952, was protected activity. It is my opinion that the strike on that date was undertaken by the Union in violation of Section 8 (d) of the Act and that the strikers therefore lost the status of employees protected by the statute.

The General Counsel has urged and the majority has found that on April 30, 1952, the date of the strike, a contract was in "full force and effect." With this finding I am in complete agreement. According to the provisions of the contract, which are quoted in the majority opinion, the contract became one with no expiration date after October 23, 1951, unless canceled in the manner provided for in the contract. The method of termination is clearly defined in the contract. Either party desiring to amend the contract was to give such notice not earlier than August 24, 1951, sixty

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days before the end of the initial term. If agreement on modification was not reached within the 60-day period, the contract became one terminable upon the giving of 60-days' notice of termination by either party. The record discloses that neither party gave the notice to terminate provided for by the contract, and thus it continued in effect up to August 3, 1952, when a new contract was executed.

Section 8 (d) of the Act provides certain standards by which the Board must determine whether employers and labor organizations have fulfilled their duties to bargain collectively under the Act. The relevant portions of Section 8 (d) pertinent to the situation where a contract is in existence are as follows:

. . . Where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

. . . Any employee who engaged in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended . . . .

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As I stated in my concurring opinion in United Packinghouse Workers of America, CIO (Wilson & Co.), 89

NLRB 310 at 319, the language of Section 8 (d) is plain and unambiguous. It sets forth the procedure to be followed in the termination or modification of a contract at its expiration date. My reasons for reaching this conclusion are discussed fully in my opinion in the Wilson & Co. case. It is sufficient here to say that not only does the wording of the several subsections of Section 8 (d) show that Congress was prescribing certain standards of conduct during the period around the expiration of a contract, but the legislative history concerning the proviso also supports this view.

In the present case, the Union notified the Respondent on August 24, 1951, of its desire to amend the contract. It also notified the Federal Mediation and Conciliation Service and the State Labor Commissioner of the existence of a labor dispute. However, under the terms of the contract that notice did not terminate the contract, and, when October 23, 1951, the end of the sixty-day period after the notice to modify and the end of the initial term of the contract, arrived, the contract did not expire, but under its terms was converted into a contract terminable at will upon the giving of a 60-day notice to terminate. At any time thereafter, upon the giving of the 60-day notice of termination required by its terms, the contract was subject to termination, but it was not so terminated.

Section 8 (d) (4) required the Union to refrain from striking for a period of sixty days after notice was given or "until the expiration date of such contract, whichever occurs later." It is questionable to me that the "notice" given by the Union here, and in the circumstances of this case, is the kind of notice contemplated by the statute. However, it is not necessary to determine that question, for, in any event, the extension of the contract continued as neither of the parties gave the notice to terminate. Even assuming that the notice to modify given on August 24, 1951, met the requirements of the statute, the expiration date, which occurred later,

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became, the significant date and the one which marked the end of the Union's obligation to refrain from striking. As the Union did strike within this period, it violated Section 8 (d) (4) and the strikers thereby lost their status as employees of the Respondent and were not entitled to reinstatement at any time after they struck on April 30, 1952.

In view of the Union's failure to comply with Section 8 (d) of the Act and the Respondent's genuine attempts to reach a collective bargaining agreement from August 29, 1951, to August 3, 1952, when a new contract was executed, I would not find a violation of Section 8 (a) (5) in the isolated incidents upon which the majority finds a technical violation.

As I would find neither a violation of Section 8 (a) (3) nor Section 8 (a) (5), I would dismiss the complaint herein.

Signed at Washington, D. C. July 30, 1953.

Abe Murdock, Member
National Labor Relations Board

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APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OIL WORKERS INTERNATIONAL UNION, CIO, or in any other labor organization of our employees, by discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL MAKE whole the employees who went on strike on April 30, 1952, for any loss of pay suffered as a result of the discrimination against them between June 21, 1952, and August 3, 1952.

WE WILL NOT engage in any acts, in any manner interfering with the efforts of OIL WORKERS INTERNATIONAL UNION, CIO, to negotiate for, or represent, the employees in the bargaining unit consisting of:

All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at our Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors as defined in the Act.

Lion Oil Company
(Employer)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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Exceptions by the Respondent Lion Oil Company to the Proposed Findings of Fact, and Proposed Conclusions of Law, and Proposed Order Issued by the Board under Date of July 30, 1953.

Comes Lion Oil Company, Respondent in the above entitled case, and files these, its exceptions to the Proposed Findings of Fact, and Proposed Conclusions of Law, and Proposed Order, issued by the Board in this case under date of July 30, 1953.

With respect to each portion of the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, issued in this case under date of July 30, 1953, referred to in these Exceptions, the page at which the portion to which reference is made is found, will be referred to by number, followed by the line on that page on which the portion begins. Both the number of the page and the line will be preceded by the letter "O".

The page and line to which each portion of the testimony, and each Exhibit, in the transcript of the testimony and exhibits adduced in the hearing before the Trial Examiner, will be followed by a reference to the number of the page on which the matter involved is shown, followed by the number of the line on the page, both the number of the page and the line being preceded by the letter "R".

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Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "A. BACKGROUND AND SUMMARY OF EVENTS" (O-3-25)

1. The Respondent excepts to the Finding of Fact "Negotiations on modifications of the contract began on August 29, 1951." (O-5-3)

2. The Respondent excepts to the Finding of Fact "On February 14, 1952, the employees voted to strike and notified the Respondent." (O-5-4)

Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "B. DISCRIMINATORY REFUSAL TO REINSTATE" (O-5-18)

3. The Respondent excepts to the Finding of Fact "On August 24, 1951, in accordance with Section 8 (d) of the Labor-Management Relations Act, the Union notified the Respondent, Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas, that it desired to modify the contract, and that a labor dispute existed." (O-6-14)

4. The Respondent excepts to the Finding of Fact "Throughout the negotiations, which continued after the strike, the Respondent's position was that the strike had breached and thus terminated the contract." (O-6-20)

5. The Respondent excepts to the Finding of Fact "On June 4 and 5, 1952, E. P. Shelton, officer of the Local and Chairman of the local bargaining committee, appeared at the plant gate with three groups of strikers, and stated that they had reported to go to work. When Shelton, in response to a question from Sprague, plant superintendent, stated that the men would report for work when then was no picket line, Sprague stated that he could not permit them to return under such conditions. The International Association

of Machinists, which had been on strike since the expiration of its contract on May 15, 1952, and which maintained a picket line until June 20, 1952, when it signed a contract with Respondent, temporarily withdrew its pickets on each of these occasions but immediately resumed picketing when the groups departed." (O-7-11)

6. The Respondent excepts to the Finding of Fact "The strikers were paid sickness benefits, employees' credit privileges were extended to them, and upon authorization to deduct their contribution to group insurance and hos-

pitalization premiums from wages earned after the strike, the Respondent maintained its own and the employees' contributions to such insurance premiums." (O-13-29)

7. The Respondent excepts to the Finding of Fact "In this case there is no danger that the Respondent would suffer undue hardship caused by a strike without adequate notice." (O-16-4)

8. The Respondent excepts to the Finding of Fact "In any event, however, it is apparent from the record that such notice was in fact given by the Union to the Respondent." (O-16-23)

9. The Respondent excepts to the Finding of Fact "As indicated above on August 24, 1951, the first date when it could have done so under the contract, the Union notified the Respondent of its desire to modify the contract, and informed the Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas, of that fact, and of the existence of a labor dispute." (O-16-26)

10. The Respondent excepts to the Finding of Fact "The record also clearly shows that the Union has been most meticulous in its concern over minimizing the possibility of damage each time there has been a strike at the plant." (O-20-3)

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11. The Respondent excepts to the Finding of Fact "It is our conclusion, however, that the Respondent's expressed fear of another strike within a short time was not based on the realities of the situation." (O-20-17)

12. The Respondent excepts to the Finding of Fact "The record amply demonstrates that the Union, in this and other previous strike situations at the plant, displayed the utmost concern that undue hardship should not be incurred by the Respondent, by giving the Respondent full and sufficient notice and offering to conduct the shut down in an orderly manner at the direction of the Re-

spondent. The record also shows that in the course of contract negotiations, during the strike, the Union, by its proposals, gave positive evidence, not only that it did not intend to go out again within a short time, but that, in fact, it was willing to forego its right to strike for certain periods of time, albeit short of the one year period sought by the Respondent." (O-20-24)

Exceptions to conclusions of law contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and the Proposed Order, under the heading "B. DISCRIMINATORY REFUSAL TO REINSTATE" (O-5-18)

13. The Respondent excepts to the conclusion of law "The Respondent's contention that the Board is precluded from considering the claims of the strikers by reason of the dismissal of their cross petition by the Union County Chancery Court we find to be without merit. The Board has paramount initial jurisdiction over the subject matter herein; nor was the Board a party to the injunction proceeding before the Chancery Court. Furthermore, the present proceeding is not one to adjudicate private rights, but is a proceeding to effectuate the public policy set forth in the National Labor Relations Act, as amended." (O-16-7)

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14. The Respondent excepts to the conclusion of law "The Board likewise finds without merit the Respondent's contention that the employees were not entitled to reinstatement, because they had not given 8 hours notice of intention to return to work in accordance with the provisions of the contract which required such notice after unauthorized absence not due to injury or illness. We do not believe that such a provision is applicable to the particular circumstances of a strike situation and a request for reinstatement, such as present in this case." (O-16-17)

15. The Respondent excepts to the conclusion of law "Under the principle of United Packinghouse Workers of America (Wilson and Co., Inc.), 89 NLRB 310, the re-

quirements of Section 8 (d) of the Act have been met, and the Board, accordingly, rejects the Respondent's contention that the Union has failed to comply with Section 8 (d)." (O-16-31)

16. Respondent excepts to the conclusion of law "In the present case, it is our opinion that the Respondent was not justified in refusing to reinstate the strikers until the Union signed a contract with a one year no-strike clause and for a fixed one year term without an automatic renewal clause." (O-18-13)

17. Respondent excepts to the conclusion of law "Even if, as contended by the Respondent, the request were made subject to continuation of negotiations and the terms of the existing contract, which had not been terminated, such 'condition' would not be objectionable as it asks only that the Respondent do that which it was legally bound to do and to return to the situation which existed at the time the strike began." (O-18-21)

18. The Respondent excepts to the conclusion of law "In our opinion, however, under the circumstances of this case the Respondent has not proved a case of misconduct by the Union, delinquency by the employees in their

obligations to the Respondent, or undue hardship to the Respondent. We are aware, of course, that almost all, if not all, strike situations cause some detriment of various kinds to the parties involved, but, in our opinion, that alone is not sufficient to deny to the strikers their statutory right to reinstatement under the conditions of this case." (O-19-10)

19. The Respondent excepts to the conclusion of mixed law and fact, "The damage to the Respondent's equipment and the probability of damage appear to be comparatively negligible in relation to the value of the plant, the large volume of business done by the Respondent, the loss of sales to customers during a complete shut down, and the damage to equipment possible during full

"normal operation of the plant when there is no strike." (O-19-17)

20. The Respondent excepts to the conclusion of law "On June 21, 1952, and the following days, the Respondent individually interviewed striking employees and reinstated them upon their assurance that they would not strike. This was done at a time when the Respondent unlawfully rejected the Union's attempts to get the employees back to work and when the Respondent declined to deal with the Union on grie ances. In our opinion this conduct constitutes discrimination violative of the Act, as it required the employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this repect and to return as individuals after personal interviews and not as a group." (O-21-11)

21. The Respondent excepts to the conclusion of law "In the circumstances of this case we find, therefore, that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint and by individually interviewing the strikers and reinstating them upon their assurance that they would not strike at a time

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when the Respondent rejected the Union's attempts to get the strikers back to work and declined to deal with the Union on grievances." (O-21-21)

Exceptions to the failure of the Panel to find facts pertinent to the issues as to whether the Respondent's refusal to reinstate employees here involved on and after June 21, 1952, was discriminatory.

22. The Respondent excepts to the Panel's failure to find as a fact that the strike here involved was called by Oil Workers International Union, C.I.O., as the exclusive bargaining agent of the employees of the Respondent here involved. (R-130-16)

23. The Respondent excepts to the Panel's failure to find as a fact that the strike here involved was called by

Oil Workers International Union, C.I.O., as a part of the nation wide strike in the oil industry called by that Union. (R-130-20)

24. Respondent excepts to the failure of the Panel to find as a fact that on the 3rd or 4th of June, 1952, John Henry Young, a member of the bargaining committee representing the Union in bargaining with the Respondent concerning the issues involved in the strike here involved, came to a meeting between the bargaining committee and the international representative representing the Union and representatives of the Company, playing with a yo-yo. (R-336-18)

25. The Respondent excepts to the Panel's failure to find as a fact that when, on each of three separate occasions, on the fourth and fifth days of June, 1952, E. P. Shelton appeared at the plant gate with a group of strikers and stated that the group then present reported to go to work, Shelton was acting as an international representative of Oil Workers International Union, C.I.O. (R-128-1)

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26. The Respondent excepts to the Panel's failure to find as a fact that on Friday, June 20, 1952, 260 employees of the Respondent, employed at the chemical plant here involved in maintaining the plant, had agreed with the Respondent to return to work at that plant on the morning of Monday, June 23, 1952, and the Panel's failure to find that those employees normally did not work on Saturday and Sunday. (R-463-1)

27. The Respondent excepts to the Panel's failure to find as a fact that the Union, on June 21, 1952, when it offered to cause the employees involved in the strike to return to work, or at any time thereafter, did not agree that the striking employees represented by it would work at the plant for any stated period of time if the Respondent would permit them to return to work at the plant. (R-133-14) (R-141-22)

28. The Respondent excepts to the Panel's failure to find as a fact that the Respondent had reasonable grounds

to believe that if, as the Union requested, the striking employees represented by the Union were permitted to return to work those employees would soon thereafter again strike for the purpose of disrupting the Respondent's operation of the portion of the plant that the Respondent was at all times between April 30, 1952, and August 4, 1952, operating.

29. The Respondent excepts to the Panel's failure to find that each offer of the Union, made on June 21, 1952, or thereafter, to cause the striking employees represented by it to return to work at the plant, was made upon condition that the Respondent continue to negotiate with the Union thereafter toward a settlement of the issues from time to time in dispute between the Respondent and the Union, and to the Panel's failure to find that if the Respondent had permitted the striking employees to return to work under that condition the Union would have held over the head of the Respondent while the men

were working a threat of another strike by the employees involved, to strengthen the bargaining position of the Union with respect to such issues in dispute.

30. The Respondent excepts to the failure of the Panel to find as a fact that the Union continuously contended, from June 30, 1952, until a new contract between the Respondent and the Union was executed on August 3, 1952, that the employees working for it at the plant here involved had a right to strike at any time, without giving the Respondent sixty days notice of the Union's election to terminate the contract existing between the Respondent and the Union.

31. The Respondent excepts to the Panel's failure to find as a matter of law that the Respondent had the right to lock out the striking employees represented by the Union, for the purpose of strengthening the Respondent's bargaining position with the Union as a corollary to the Union's right to strike to strengthen its bargaining position.

32. The Respondent excepts to the Panel's failure to find as a fact that Mr. Smith, Director of Personnel, and an attorney for the Respondent, visited the General Counsel of Oil Workers International Union, C. I. O., in Denver Colorado, in February, 1952, and attempted, through him, to persuade the Union that the employees of Respondent here involved had no legal right to strike until the contract between the Respondent and the Union had been terminated by notice from the Union to the Respondent to that effect, given sixty days prior to the date fixed as the effective date of the termination, and that the General Counsel of the Union stated the position of the Union to be that it had the legal right to call a strike of the men here involved at any time without giving such notice.

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33. The Respondent excepts to the Panel's failure to find that the Trustee for the Missouri Pacific Railroad Company, the sole railroad carrier serving the plant, sent crews and equipment into the plant on May 9, May 14, and May 19, 1952, to take tank car shipments from the plant. There was no further railroad service to the plant until May 31, at which time the United States District Court for the Western District of Arkansas served a restraining order on Oil Workers International Union, C. I. O. and International Association of Machinists, who were picketing the railroad track at that time, enjoining them from interfering with the railroad employees going into the plant with equipment to take tank car shipments therefrom. (R-459-14)

Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "C. THE REFUSAL TO BARGAIN." (O-21-28)

34. The Respondent excepts to the Finding of Fact "On August 24, 1951, the Union, under the terms of the contract in existence at that time, notified the Respondent that it desired to modify the agreement and specified 34

provisions of the contract which it desired to amend." (O-21-31)

35. The Respondent excepts to the Finding of Fact "Accordingly, we find that at the meeting of July 16, 1952, Meinert conditioned the signing of a contract upon the withdrawal by the Union of unfair labor practice charges pending before the Board." (O-30-12)

36. The Respondent excepts to the Finding of Fact "Although during the negotiations the Respondent contended that the contract in effect at the time of the strike, April 30, 1952, was no longer in effect, in its answer to the complaint in this case, the Respondent has alleged that the contract was in full

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force and effect for the entire period of June 21, 1952, through August 3, 1952." (O-31-20)

37. The Respondent excepts to the Finding of Fact "The Respondent also informed the Union that, although it would not consider the grievances of the employees, if presented by the Union, it would entertain grievances from individual employees." (O-34-23)

38. The Respondent excepts to the Finding of Fact "The record is equally clear that the Respondent made the withdrawal of the unfair labor practice charges a condition precedent to the signing of an agreement." (O-34-29)

Exceptions to Conclusions of Law contained in the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, under the heading "C. THE REFUSAL TO BARGAIN." (O-21-28)

39. Respondent excepts to the Conclusion of Law "The Board does, however, find violations of Section (a) (5) in (1) the Respondent's dealing with individual strikers at a time when the Union had abandoned the strike by offering the unconditional return to work of the strikers, and the Respondent had refused to deal with the Union on the matter; (2) the Respondent's conditioning of the sign-

ing of an agreement upon the withdrawal of the unfair labor practice charges in this case; and (3) the Respondent's refusal to recognize that the contract was in effect, not having been terminated, and to permit the Union to administer it during the strike." (O-34-7)

40. The Respondent excepts to the Conclusion of Law "We view this conduct as bypassing the Union, in derogation of the Union's status, as exclusive bargaining representative, and thus it constitutes a refusal to bargain in violation of the Act." (O-34-25)

41. The Respondent excepts to the Conclusion of Law "The initiation of unfair labor practice proceedings does not suspend the operation of the Act;

nor does it relieve the respondent of the duty to bargain. As the Court of Appeals for the Fourth Circuit declared in Hartsell Mills, the respondent 'could not thus make its compliance with the Act dependent upon dismissal of charges that it had been guilty of violating it.' We, therefore, in accordance with well established policy (see American Laundry Machinery Company) 76 NLRB 981, The Toledo Desk & Fixture Company, 75 NLRB 744, and Hartsell Mills Company, 18 NLRB 268, enf'd. as modified, in 111 F. 2d, C. A.-4) find that this conduct also violated Section 8 (a) (5) of the Act." (O-34-31)

42. The Respondent excepts to the Conclusion of Law "It is true that the Board will not find a violation of a contract to be an unfair labor practice. The Board's reasons for that policy are given in United Packinghouse Workers of America (Wilson & Co., Inc.), 89 NLRB 310 at 317. We, however, do not view the Respondent's conduct in this respect as a mere breach of contract; it goes to the fundamental concept of the Union's status as bargaining representative of the Respondent's employees. Under the circumstances of this case, the Respondent had a statutory obligation to recognize the Union as the exclusive bargain-

ing representative, and to permit the Union to function as such. To deny the Union recognition as the exclusive agent under the contract and to frustrate its performance as such bargaining agent constitutes, in our opinion, a failure by the Respondent to fulfill its statutory duty to bargain under Section 8 (a) (5) of the Act." (O-35-17)

43. The Respondent excepts to the Conclusion of Law "We also find that, as the Respondent's conduct constituted a failure to bargain, it thereby interfered with, restrained, and coerced the Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (a) (1)." (O-35-29)

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Exceptions to Findings of Fact and Conclusions of Law contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order; under the heading "V. The Remedy." (O-37-1)

44. The Respondent excepts to each Finding of Fact, and each Conclusion of Law, stated in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, issued in this case on July 30, 1953, under the heading "V. The Remedy." (O-37-1)

Exceptions to the Conclusions of Law stated in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "Conclusions of Law." (O-37-27)

45. The Respondent excepts to the Conclusion of Law "2. By discriminating in regard to the hire and tenure of employment of the employees who went out on strike on April 30, 1952, whose names are listed in the complaint herein, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act." (O-37-30)

46. The Respondent excepts to the Conclusion of Law "5. By refusal to bargain collectively with Oil Workers

International Union, CIO, as the exclusive representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act." (O-38-14)

47. The Respondent excepts to the Conclusion of Law "6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act." (O-38-18)

48. The Respondent excepts to the Conclusion of Law "7. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act." (O-38-22).

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49. The Respondent excepts to the Order contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "Order" (O-38-24) and every part thereof, with the exception of the last three lines thereof, which last three lines begin on the sixth line on page 40 of the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order issued in this case on July 30, 1953.

Respectfully submitted,

Lion Oil Company
By Jeff. Davis
Attorney

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Decision and Order

On July 30, 1953, a majority of a Panel of the Board issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order in the above-entitled case, finding that the Respondent had engaged in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action as set forth in the Proposed Findings, Conclusions, and Order, attached hereto. Thereafter the Respondent filed exceptions to the Proposed Findings, Conclusions, and Order, a supporting brief, and a request for oral argument. On September 24, 1953, at Washington, D. C., the Board heard oral argument in which the Respondent, the charging Union, and the General Counsel participated.

Thereafter, in the light of the exceptions, brief, and oral argument, the Board has reviewed the Proposed Findings, Conclusions, and Order and only insofar as they are consistent with this Decision and Order hereby adopts the Panel's Proposed Findings, Conclusions, and Order.

1. The first issue that must be decided in this case involves interpretation of the notice provisions of Section 8 (d) of the Act. The Respondent contends that the Union failed to observe the waiting requirements of that Section before striking to enforce its demands, and that by such conduct it removed the striking employees from the protection of the Act. We do not agree.

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The pertinent facts are not in dispute. In 1950 the Respondent and the Union entered into a collective bargaining contract which by its terms was to remain in effect until October 23, 1951, and was to continue in force thereafter for an indefinite period, subject to cancellation on notice by either party. Specifically, the duration clause permitted 60 days' notice to amend on or after August 24, 1951, and if the parties did not agree on a new contract

after that period, a further 60 days' notice to terminate the contract completely.[1]

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modification of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to return to work, and the Respondent refused to reinstate them. A new contract

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and a strike settlement were executed on August 3, 1952, and on August 4, the strikers began to return to work.

The August 24, 1951, notices of the existence of a labor dispute were adequate in content and destination to meet the formal requirements of Section 8 (d), and we so find.

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[1] "This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until cancelled in the manner hereinafter in this Article provided.

"This agreement may be cancelled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

The issue then is whether the Union's resort to economic action was so timed with respect to the notices as to satisfy the waiting period set out in the Section. Because of the importance of this issue and because the Section since its enactment has so seldom required construction by the Board, we deem some general comment on its meaning advisable. The pertinent language of the Section is set out below.[2]

The fundamental purpose of the Section is to assure that, once parties have stabilized their bargaining relationship by entering into a

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[2]Section 8 (d)

. . . Where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

. . . Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9 and 10 of this Act, as amended, . . .

contract, the stability achieved will not be placed in jeopardy by strikes or lockouts. It is for this reason that the Section provides for a waiting period before strike or lockout action by the parties. Clearly, Congress was interested in establishing an orderly procedure for contract negotiations and in preventing the industrial unrest that is the natural consequence of the failure of parties to abide by their collective bargaining agreements.[3]

With the Congressional purpose as a background, we advert to the language itself of Section 8 (d). It is to be noted that the initial phrase of the notice provisions contained in the Section, which necessarily applies to all the following sub-divisions, reads: "Where there is in effect a collective bargaining contract covering employees . . . no party . . . shall terminate or modify such contract, unless . . ." Thus, the plain wording of the Section makes the required notices mandatory at all times when collective bargaining agreements are in effect, not only when a party desires to terminate but equally when a party seeks to modify a contract.[4] It is argued that the notice provi-

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[3]It is evident from the legislative history of the 1947 amendments to the Act, which include Section 8 (d), that Congress was generally concerned with promoting industrial peace by having parties adhere to collective bargaining agreements. Thus, the Senate Committee on Labor and Public Welfare in its report among other things said: "Statutory recognition of the collective agreement as a valid and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties of such agreements, and will thereby promote industrial peace." S. Rep. No. 105 on S. 1126, p. 17.

[4]Senator Ball, a proponent of Section 8 (d), said: "The provision . . . provided that where a contract between a union and an employer is in existence, fulfilling the obligation on both sides to bargain collectively means giving at least 60 days' notice of the termination of the contract, or of the desire for any change in it, is another provision aimed primarily at protecting the public, as well as the employee, who have been the victims of 'quickie' strikes." (emphasis supplied) Cong. Rec., May 12, 1947, p. 5146.

sions of the Section are applicable only when a contract is about to end. It would be futile, however, in

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our opinion, to require a waiting period for strikes and lockouts only at a time when the parties are already on notice, by virtue of their own agreement, of the imminence of termination. That such limited view could not have been the Congressional intent is not only shown by the plain and unambiguous language set out above, but also by the fact that there is no logical distinction—in the perspective of the Congressional objective of promoting industrial peace—between one period of a contract and another. Certainly it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination.

Turning now to the situation presented by the instant case, the critical provision is 8 (d) (4), which provides that the employer and union shall continue in effect the existing contract, without resorting to strike or lockout for "sixty days after such notice is given or until the expiration date, whichever occurs later" (emphasis supplied). It is urged that, despite the plain wording of the statute, Congress intended that 60 days constitute the maximum waiting period before strike or lockout. We are unable to agree. If that had been the intent, there would have been no point in Congress inserting in 8 (d) (4) the phrase "until the expiration date" or the additional phrase "whichever occurs later." The language of 8 (d) (4) is not ambiguous and cannot be amended or rewritten by administrative interpretation. Moreover, if resort be had to legislative history, it appears that Senator Taft, the co-author of the Act, made it clear that 8 (d) (4) requires a waiting period before strike or lockout during the life of a contract when he said: "If such notice is given, the bill provides for no waiting period except during the life of the contract itself."[5]

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[5]Cong. Rec., April 23, 1947, p. 3952. The Senate Minority Report, in objections to Section 8 (d) stated: "Since not every

Our primary problem, it seems to us, therefore, is to ascertain what Congress meant by "expiration date" in this context. Once this is determined as applied to the various types of contracts in use in the labor field, our task is greatly simplified; since we then have discovered a fixed pole against which to measure the waiting period. That is to say that the application of Section 8 (d) (4) then becomes a matter of simple arithmetic. If the notice is given more than 60 days before the expiration date, the expiration date becomes the critical date prior to which no strike or lockout is lawful; likewise, if the notice is given less than 60 days before the expiration date, then the 60-day period extending beyond the expiration date is controlling.

If Section 8 (d) is considered both in the framework of industrial reality[6] and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of the contract, it becomes clear that Congress used the term "expiration date" to signify the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination, regardless

collective bargaining contract contains a no-strike clause, the effect of the proposal is to incorporate such provisions by legislative fiat." S. Min. Rep. No. 105, Pt. 2, on S. 1126, p. 22. It is significant that notwithstanding this contention, the section was passed by Congress in its present form.

[6]For example, the Board with Court approval has held that with respect to Section 8 (d) notice of intention to modify a bargaining contract in substantial respects is the equivalent of notice to terminate. J. W. Woodruff, Sr. d/ba/ Atlanta Broadcasting Company, 90 NLRB 808, 811, enforc'd 193 F. 2d 641 (C. A. 5); Great Bear Logging Company, 59 NLRB 701, 703; American Woolen Company, 57 NLRB 647, 649; Atlas Felt Products Company, 68 NLRB 1, 3; William Barnett & Son, Inc., 74 NLRB 81, 82, 83. Accord: Moran Shoe Co. and United Shoe Workers, Local 200-A, 2 Amer. Labor Arbitration Awards, 67, 880 (Sept. 25, 1947); Anderson v. Tuomi, et al., 230 Minn. 490, 42 N. W. 2d 204.

of whether notice is required explicitly by the agreement. The term "expiration date" as used in Section 8 (d) (4) thus has a twofold meaning; it connotes not only the terminal date of a bargaining contract, but also an agreed date in the course of its existence when the parties can effect changes in its provisions.

Under this view, the expiration date of a fixed term contract with no provisions for reopening is the actual terminal date. In this connection,

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we do not say that Congress intended by Section 8 (d) to convert contracts for fixed terms into contracts at will, terminable on 60 days' notice. The "expiration date" of a contract containing an automatic renewal clause — i. e., an agreement subject to modification or termination upon notice at fixed annual periods — is the earliest date on which modification or termination could be effective. We think the same rule applies to a contract for a fixed term providing for a wage reopening at a prescribed period. Similarly, in contracts of indefinite duration, which are rare in labor relations, the 60 day notice to modify or terminate would fix the period during which lockouts and strikes are proscribed.

Our dissenting Member, Mr. Murdock, characterizes this interpretation of the Statute as reading a no-strike clause into every contract. This characterization misapprehends the purport of our decision. Our interpretation preserves the right to strike in all circumstances where the parties have provided in their agreement for negotiating substantial changes in its provisions — if the statutory requirements of Section 8 (d) are met. Moreover, our decision has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination. We say only that strikes to alter the provisions of a firm contract of fixed duration, and containing no provision for modification, must await the termination date. Member Murdock's interpretation of Section 8 (d) destroys, in our opinion, the obligation of the parties to abide by the terms of a collective bargaining

agreement. For he would permit strikes and lockouts to force changes in the terms of a bargaining agreement at any time during its lifetime, rather than only at such time as was contemplated by the parties when they entered into the agreement. In fine, Member Murdock's interpretation defeats the Congressional purpose of promoting stability in bargaining relationships.

Our holding, moreover, supports the prime objective of the Act as

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a whole, to encourage the "practices and procedures of collective bargaining". It has been stated too often to bear repetition that the ultimate achievement of collective bargaining is the contract itself. If, as we believe, Congress, in the 1947 Amendments to the Act, deemed it wise through Section 8 (d) to insist upon adherence to fixed contracts voluntarily negotiated and executed, its step only furthered the basic purpose of the Act itself. Nor, in the light of experience, is our construction inconsistent with the actualities of industrial life. Contracts for fixed periods are not made to be broken. That the intention to be bound by the established expiration date is ever present during negotiations is conclusively evidenced by the stress always placed in contract negotiations on wage reopening — or other modification — clauses. These clauses, now almost universal in bargaining contracts exceeding one year in duration, are in effect qualifying reservations of the privilege to economic action at dates earlier than the final terminal day.[7]

On this point, we feel that we should comment on the critical significance which Member Murdock attaches to the differences between contractually provided notices to

[7] In discussing the union's duty to bargain as set out in Section 8 (b) (3) and 8 (d) of the 1947 Amendments, Senator Morse said: "A contract has been signed, and I take the position this afternoon, as I have taken the position in many cases, that the union, once it signs a contract has no right to strike during the life of the contract if the strike is to force a change in the terms of the contract."

modify and notices to terminate.[8] The inconsistency between such a view and the salutary purposes of the entire Section is especially illustrated by this very case. Thus, under Member Murdock's interpretation, we take it that the Union was free to strike without giving any notice whatsoever in August, 1951, since this was presumably not "around the expiration date of the contract." This is apparently so for

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the reason that the contract had no fixed expiration date. However, our colleague would further hold that, having given notice to modify, the Union by its own action in seeking to comply with 8 (d) (at a time when he thinks it was not required by 8 (d) to do so) created an obligation to give a second notice and then await the final termination of the agreement before it could lawfully strike. In short, the Union, under his interpretation, could have struck without any notice in August, but, by virtue of giving the notice, and having exhausted all the mediating and negotiating requirements of Section 8 (d) could not lawfully strike the following April.

We cannot accept this proposition. In our opinion, (1) this view would encourage resort to "quickie" strikes and lockouts in the middle of a contract term, (2) it would encourage the termination of contracts as opposed to their modification, and (3) it would penalize a union which withholds strike action for a protracted period in an effort to reach agreement rather than merely observing the minimum waiting period provided in the Statute. We are certain that Congress did not intend that Section 8 (d) should have such unsettling results.

It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days

[8] As noted above, the Board has repeatedly refused to distinguish between notice to modify and notice to terminate, considering them for the purposes of Section 8 (d) one and the same thing.

before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which, as indicated above, we consider tantamount to "expiration" as that term is used in Section 8 (d) (4)) coincided.[9] Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act.

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Our decision in this case is not inconsistent, we believe, with the interpretation which the Court of Appeals for the Eighth Circuit placed upon Section 8 (d) in its opinion in the Wilson case. Local No. 3, United Packinghouse Workers of America, CIO, v. National Labor Relations Board, 210 F. 2d 325, 331-333. In that case, a strike was called more than 60 days after the giving of notices of the kind required by Section 8 (d), but before the expiration date of a contract between the Company and the Union. A majority of the Board in the Wilson case had concluded that Section 8 (d) prohibits a strike to secure modification or termination of a contract only for a period limited to 60 days after the notices required by the Section have been given, and had held that the strike in question did not contravene the Section because the 60 day waiting period had been satisfied. The Court of Appeals believed, however, that the strike contravened Section 8 (d) because it occurred before the expiration date of the bargaining contract. Because of the basis on which the Board decided the Wilson case, the construction of 8 (d) which we adopt here was not presented by the Board to the Court. Leaving aside the effect of the wage reopener, we agree with the view of the Court of Appeals consistent with the opinions expressed herein, that the 60-day notice period is not the maximum waiting period. Subject to the construction which we have given to Section 8 (d) here, we

[9] See American Lawn Mower Company, 108 NLRB No. 215.

adopt the view that the waiting period extends until the "expiration date" of the contract.

In this case, it is clear that the statutory waiting period has here been satisfied since the strike herein occurred after the "expiration date" of the parties' agreement had passed.

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2. A majority of the Panel of the Board in the Proposed Findings, Conclusions of Law, and Order found that the Respondent had violated Sections 8 (a) (3) and 8 (a) (1) by certain conduct. We agree that the Respondent has violated these sections of the Act for the following reasons:

During contract negotiations, on April 29, 1952, the Respondent informed the Union that it wanted a no-strike clause in the contract. Subsequently, at other meetings, the Respondent stated that it would not sign an agreement which did not contain a no-strike clause and a termination clause which did not provide for automatic renewal. The Union was informed by the Respondent on June 20, 1952, that the strikers had not been replaced. On June 21, 1952, the Union unconditionally offered to return the employees to work. The Respondent replied that it would not permit the employees to return until a new agreement had been reached which included a no-strike clause and the termination clause which it wanted. After the offer to return to work was rejected, the Union requested a meeting on grievances to present the employees' claims to 2 weeks pay in lieu of notice of layoff under the old contract. The Respondent refused to entertain any grievances.

On June 23, 1952, the Union repeated its offer to have the employees return to work. On the same date the Respondent sent a letter to the Union and mailed copies to the strikers at their homes. The Respondent's letter stated (Details are set forth in the Proposed Findings) that it would not settle the dispute until the employees represented by the Union agreed not to strike for a 1-year period.

The Respondent on June 21, 1952, and subsequently, refused to permit the employees to return in a group and on June 23, 1952, notified the strikers that they could not return until the Union had signed a contract providing for agreement not to strike for 1 year. On June 21, 1952, and for several days, many employees, individually and in groups, made

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offers to return to work. As stated in the Proposed Findings, they were informed that they would have to speak to the plant superintendent who in many cases was not available. During this time, however, certain employees were permitted to go to work after they had been individually interviewed by the plant superintendent upon the agreement and under the condition that they would remain at work. Significantly, the Respondent resumed operations in its sulphuric acid section on June 25, 1952, and in the ammonium sulphate section on June 26, 1952, both of which had been shut down during the strike.

Thus, on June 21, 1952, and the following days, the Respondent interviewed individual strikers and reinstated them upon their assurance that they would not strike. At the same time the Respondent refused the Union's offer to have the strikers return until, among other things, the Union agreed to a no-strike clause for a 1-year period, a condition which the Union was resisting. This position of the Respondent was communicated to all the strikers by the Respondent's letter. As this conduct required employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this respect and to return after personal interview as individuals, and not as a group, it constituted discrimination, coercion, restraint, and interference violative of the Act, as to the strikers who continued to adhere to the lawful bargaining position of their statutory representative.

In the circumstances of this case, therefore, we find that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint, as it rejected the Union's

attempts to get the strikers back to work, but at the same time individually interviewed the strikers and reinstated them upon their assurance that they would not strike.

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3. A majority of the Panel also found that the Respondent had violated Section 8 (a) (5), and thereby Section 8 (a) (1), of the Act by certain conduct set forth in detail in the Proposed Findings, Conclusions, and Order. We agree with the Panel's conclusions in this respect, but we do not adopt all the grounds upon which the Panel based its proposed conclusion. We find, however, for the reasons stated in the Proposed Findings, Conclusions, and Order that the Respondent violated Sections 8 (a) (5) and 8 (a) (1) by (1) dealing with the individual strikers at a time when it refused to deal with the Union on the return to work of the employees, following the Union's abandonment of the strike by its unconditional offer to return the strikers; and (2) by making the withdrawal of unfair labor practice charges a condition precedent to the signing of a contract.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization,

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to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the complaint herein for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section entitled "The Remedy" in the attached Proposed Findings;

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A."[10] Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

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[10]If this Order is enforced by a decree of a United States Court of Appeals the attached notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" in the caption, the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated

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against its employees in violation of Section 8 (a) (4) of the Act.

Dated, Washington, D. C. Aug 5 1954

Guy Farmer, Chairman
Philip Ray Rodgers, Member
Albert C. Beeson, Member
(Seal) National Labor Relations Board

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IVAR H. PETERSON, MEMBER, Concurring:

I agree with Chairman Farmer and Members Rodgers and Beeson in their ultimate findings that the Union complied with the applicable terms of Section 8 (d) of the Act and that the Respondent violated Section 8 (a) (1), (3) and (5) of the Act. However, in my view they adopt an artificial interpretation of the provision in paragraph (4) of Section 8 (d), which requires maintenance of the contractual terms and conditions, without resort to strike or lockout, "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."

It seems apparent to me that the prime purpose of Congress in enacting Section 8 (d) was to prevent "quickie" strikes or precipitate lockouts designed to secure the modification or termination of collective bargaining agreements. To accomplish this purpose, Congress established a mandatory 60-day "cooling off" period during which either party to a labor agreement is forbidden to resort to economic action to enforce its demands for

modification or termination of the contract. In my opinion, the duty to maintain the contractual status quo for 60 days attaches whenever the parties enter into negotiations to modify or terminate a contract. That was the reasoning of the Board majority in the Wilson case,[11] and I would adhere to it.

By giving the term "expiration date" a specialized meaning, for which I find no warrant in the Act or its legislative history, my colleagues in the majority establish a "fixed pole" against which the waiting period is to be calculated or measured. They say "expiration date" means "the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination." They then hold that if a notice is given more than 60 days before the expiration date, as they define the term, the obligation to refrain from economic action continues until the expiration date is reached. Thus, the "cooling off" period is enlarged beyond 60 days, and the effect is to hold strikes occurring more than 60 days after notice but before the contract expiration date to be unfair labor practices. But Congress in Section 13 stated that nothing in the Act, "except as specifically provided for herein, shall be construed so as to

interfere with or impede or diminish in any way the right to strike. Morever, it seems to me that Section 8 (d) itself, in stating that an employee loses his employee status if he "engages in a strike within the sixty-day period specified in this subsection," indicates that Congress intended the "cooling off" period to be only 60 days in duration rather than a flexible period of 60 or more days depending on the time interval between the date notice is given and the contract "expires." Therefore, I do not think the Board would be warranted in interpreting Section 8 (d) so as to impair the right to strike for periods in excess of 60 days following the giving of notice.

I readily concede that my construction of paragraph (4) of Section 8 (d) does not give full effect to its literal

[11] 89 NLRB 310.

language. As written, and viewed in isolation, that paragraph appears to require the maintenance of the contractual status quo until the expiration date of the contract — even though notice was given more than 60 days earlier — if the expiration date "occurs later" than the end of the 60-day period calculated from the date notice was given. But I think the result which follows from such a literal interpretation operates to write into many labor contracts a no-strike clause of substantially longer duration than 60 days, contrary to the intention of Congress, as expressed in the other paragraphs of this section, and elsewhere. I think such an extension of the statutory limitation on the right to strike can be avoided by construing the phrase "whichever occurs later" as having specific reference to a situation in which notice of desire to modify or terminate was given less than 60 days before the termination date of the contract. I believe Congress wished to make clear that in such a case the 60-day "cooling off" period should be observed before economic action could be taken, even though it extended beyond the end of the contract. As pointed out by Senator Taft (Cong. Rec., April 23, 1947, p. 3955), if a party "waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time."

Applying my view of Section 8 (d) to the facts of this case, I would hold that the notice of desire to amend given by the Union on August 24, 1951,

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was adequate to meet the requirements of Section 8 (d). As the strike in support of this demand did not occur until April 30, 1952, 8 months after the giving of notice, there can be no question that the Union fully met the 60-day waiting period. Therefore, the strikers did not lose their status as employees, but on the contrary were entitled to the protection of the Act.

In addition to the reasons set forth in the main opinion, I would find that the Respondent's refusal to recog-

nize the continuing existence of the contract and its refusal to permit the Union to administer it during the strike, are further grounds for finding that the Respondent violated Section 8 (a) (5) of the Act.

Dated, Washington, D. C. Aug 5 1954

Ivar H. Peterson, Member
National Labor Relations Board

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ABE MURDOCK, MEMBER, dissenting:

I cannot agree with my colleagues in their interpretation of Section 8 (d) of the Act. In view of my interpretation of that section, the Union did not comply with it, and I am led to the ultimate conclusion that the complaint should be dismissed in its entirety.

In 1950 the Respondent and the Union executed a contract containing the following provisions with respect to the duration of the agreement.

Article I

"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

"This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

The contract did not contain a no-strike clause.

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modifications of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to return to

work, and the Respondent refused to reinstate them. A new contract and a strike settlement were executed on August 3, 1952, and on August 4 the strikers began to return to work.

On April 30, 1952, the date of the strike, the contract was in "full force and effect." With this finding the parties are in agreement. According to the provisions of the contract, it became one with no specific expiration date after October 23, 1951, unless canceled in the manner provided for in the contract. The method of termination is clearly defined in the contract. Either party desiring to amend the contract was to give such notice not earlier than August 24, 1951, sixty days before October 23, 1951. If agreement on modification was not reached within the 60-day period, the contract became one terminable upon the giving of 60-day notice of termination by either party. The record discloses that neither party gave the notice to terminate provided for by the contract, and thus it con-

tinued in effect up to August 3, 1952, when a new contract was executed.

Section 8 (d) of the Act not only provides certain standards by which the Board must determine whether employers and labor organizations have fulfilled their duties to bargain collectively under the Act, but it also provides for the loss of employee status, for the purpose of the Act, to those employees covered by a contract who strike under certain conditions. The relevant portions of Section 8 (d) pertinent to a situation where a contract is in existence are as follows:

> ". . . Where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—
>
> "(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
>
> "(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

> "(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and
>
> "(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and con-

ditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

"... Any employee who engages in a strike within the sixty day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9, and 10 of this Act, as amended. . . ."

The proviso of Section 8 (d), in my opinion, applies only to the period around the expiration date of a contract and does not apply earlier during the term of a contract. The proviso enumerates the duties of contracting parties when they seek to terminate, renew, or renegotiate a contract for a fixed period upon the expiration of its term or when they seek to terminate or modify a contract of indefinite duration; it does not define the obligations of contracting parties with respect to changing the provisions of a contract during its term. The proviso only directs and encourages the bargaining efforts of parties to a contract during the crucial period when an existing contract is about to expire and negotiations for a succeeding contract are appropriate.

Section 8 (d) describes the action which employers and labor organizations must take to fulfill the duty to bargain required by the Act. The proviso to the section imposes additional obligations upon the parties where there is in effect a collective bargaining contract, and certain procedural requirements are outlined in paragraphs (1), (2), (3) and (4).

The language used throughout the proviso limits the application of the procedure set forth therein to termination or modification of a contract at its expiration date. Thus paragraph (1) of the proviso clearly says that a party desiring termination or modification of an existing contract shall serve a written notice of the proposed change "sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification." [Emphasis supplied.]

It does not say that 60 day' notice must be given whenever a party wants to negotiate changes in a contract, but that notice must be given only at a particular time—immediately preceding the expiration date of the contract, or, if the contract has no expiration date, then 60 days prior to the proposed termination or modification. The latter provision obviously covers contracts of indefinite duration or one terminable at will as in this case.

Paragraph (2) of the proviso requires a party desiring termination or modification of a contract to offer to meet and confer with the other party for the purpose of "negotiating a new contract or a contract containing the proposed modifications." Such language points to the negotiation of a contract to succeed an existing contract upon its expiration date.

Paragraph (4) of the proviso directs that a party desiring to terminate or modify a contract shall continue in effect, without resort to strike or lockou', the terms of the contract "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later." The notice referred to in this paragraph is the notice which paragraph (1) states shall be given "sixty days prior to the expiration date" of a contract. Hence the 60-day period during which strikes and lockouts are banned by paragraph (4) would ordinarily be the 60-day period immediately preceding the expiration date of a contract. However, in the event the party who is required to give notice delays and fails to give notice at the time specified in paragraph (1), he is prohibited from engaging in a strike or lockout after the expiration date of the contract when he would otherwise be free to exert his economic force; he may not use such tactics until 60 days after he has given the required notice. Thus paragraph (4) regulates the conduct of parties to a contract during the period around its expiration date.

That part of Section 8 (d) after the outline of procedure to be followed by a party seeking termination or modification of a contract further demonstrates that the

proviso applies only to termination or modification of a contract upon its expiration. Here Section 8 (d) explains that the duties imposed by paragraphs (2), (3), and (4) shall become "inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased

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to be the representative of the employees subject to the provisions of Section 9 (a)." [Emphasis supplied.] Under our well-known contract bar policy the Board refuses to conduct representation proceedings when a bargaining contract is in existence, absent unusual circumstances. Therefore, an "intervening certification" would usually occur only during the period around the expiration date of a contract.

Section 8 (d) further clarifies the proviso by stating that the obligations set forth in paragraphs (2), (3) and (4) shall not be construed as requiring either party to a contract for a fixed period to discuss modification of its terms if such modifications will become effective before the contract provides for the reopening of terms. Therefore the modifications contemplated by paragraphs (2), (3), and (4) — modifications on which the parties have an obligation to discuss — must be modifications which would become effective upon the expiration of the existing contract and which would appropriately be negotiated during the period around the expiration date of the contract.

Finally, Section 8 (d) provides that "any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee . . . for the purposes of Sections 8, 9, and 10, of this Act." [Emphasis supplied.] This language contemplates only one 60-day period, the notice period which paragraph (1) declares shall begin 60 days before the expiration date of an existing contract. It does not contemplate a 60-day cooling-off period at any time during

the term of a contract that one party desires to change the contract. The proviso does not purport to regulate strikes or strikers at any time other than during this specified 60-day period.

Not only does the wording of the proviso to Section 8 (d) show that Congress was prescribing certain standards of conduct during the period around the expiration of a contract, but the legislative history concerning the proviso also supports this view.

The provisions of Section 8 (d) were derived from the Senate Bill. The Senate Report on S. 1126 referring to Section 8 (d) states:

> "Another substantive feature of this subsection is a provision which relates to employers and labor organizations which are parties to collective agreements. Most agreements
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> have an expiration date, with an automatic renewal clause in the absence of advance notice by either side of a desire to terminate or modify. Under this section, parties to collective agreements in the future would be required to give 60 days' notice in advance of the termination date, if they desire to terminate or amend. Should the parties fail to agree on a new contract in the next 30 days, the party taking the lead in refusing the old contract has the duty to notify the new Federal Mediation Service of the impasse. Should the notice not be given on time, irrespective of the presence or absence of a 60-day clause in the collective agreement, it becomes an unfair labor practice for an employer to change any of the terms or conditions specified in the contract for 60 days or to lock out his employees. Similarly, it is an unfair labor practice by a union to strike before the expiration of the 60-day period. Any employee who engages in a strike during the 60-day period would lose any rights under Sections 8, 9,

and 10 of the Wagner Act, unless and until he is re-employed. It should be noted that this section does not render inoperative the obligation to conform to notice provisions for longer periods, if the collective agreement so provides. Failure to give such notice, however, does not become an unfair labor practice if the 60-day provision is complied with." (Emphasis added.) (Sen. Rep. No. 105 on S. 1126, p. 25.)

The legislative history, as reflected in the remarks of Senator Taft on the floor of the Senate, also demonstrates that the purpose of the proviso, in his opinion, was to afford the parties to a contract adequate time "before the end of the contract" for free collective bargaining and the intervention of the Mediation Service. In this connection Senator Taft stated:

> "We have provided in the revision of the collective bargaining procedure, in connection with the mediation process, that before the end of the contract, whether it contains such a provision or not, either party who wishes to open the contract may give 60 days' notice in order to afford time for free collective bargaining, and time for the intervention of the Mediation Service. If such notice is given, the bill provides for no waiting except during the life of the contract itself. If, however, either party neglects to give such notice and waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time. In that case there is a so-called waiting period during which a strike is illegal, but it is only brought about by the failure of the union itself to give the notice which the bill requires shall be given. So it seems to me to be no real limitation of the rights of labor unions." (Cong. Rec., April 23, 1947, p. 3955). (Emphasis added.)

Likewise, Senator Ives, in proposing an amendment to Section 8 (d) (3), not material to this case, described Section 8 (d) as one, "which provides that employers or employees shall serve notice 60 days before the expiration of a contract if there is going to be any change. . ." (Emphasis supplied.) (Cong. Rec., May 9, 1947, p. 5081).

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The Chairman and Members Rodgers and Beeson argue that it would be futile to require a cooling-off period only at the termination of the contract. But that is just what Congress did, although I cannot agree that Congress by so doing indulged in a futility. Their opinion states that "it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination." This conclusion, which appears to be central to their interpretation of Section 8 (d), seems to me to be based essentially upon what they individually believe would be good policy rather than upon the language of the statute or the legislative history. It is my opinion, however, that it is neither incumbent upon the Board nor proper for the Board to question the wisdom of Congress as reflected in the words of Section 8 (d) and its legislative history. In the words of the Supreme Court of the United States in Colgate-Palmolive Peet v. N. L. R. B., 338 U. S. 355 at 363, "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute." I am of the opinion that my interpretation of Section 8 (d) is a literal application of the language enacted by Congress toward a logical and reasonable result. By giving literal effect to the words of Congress, I have avoided statutory surgery, on the one hand, or legislative policy engrafting, on the other.

Although the language of the statute speaks for itself, I have also found, as it appears above, that supporters of the bill, including the Chairman of the Senate Committee, believed that Section 8 (d) was applicable only at the time around the expiration of the contract. In going to the legislative history, I have looked to the Committee Reports

and the statements in debate of supporters of the bill, unlike the Chairman and Members Rodgers and Beeson, who rely upon the statements of Senators Murray and Morse who voted against the bill and upon the Senate Minority Report. As the Supreme Court stated in Schwegmann Bros. v. Calvert Distillers Corp., 341 U. S. 384 at 394, "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of statutory words is in doubt."

I cannot, among other things, reconcile the provision of Section 8 (d) that, "the duties so imposed shall not be construed as requiring either party to

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discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract" with the conclusion of Member Peterson that Congress established a mandatory 60-day "cooling-off" period which "attaches whenever the parties enter into negotiations to modify or terminate a contract." Is it reasonable to conclude that Congress could have required a "cooling-off period" for bargaining at a time when it expressly stated neither party was under an obligation to bargain on changes in the contract?

I wish to make it clear beyond any doubt that in my opinion Congress has not removed no-strike clauses in contracts from the sphere of collective bargaining and legislated them into every collective bargaining agreement by the terms of Section 8 (d). Congress did, in effect, write into contracts a 60-day notice period similar to the 60-day notice to terminate or modify contracts with automatic renewal clauses, which the Senate Report stated are found in "most agreements." In referring to such contractual provisions, the Senate Report, quoted earlier, stated that "irrespective of the presence or absence of the 60-day clause in the collective agreement" parties to contracts must

give such 60-day notice to terminate or modify under Section 8 (d): I am unable to perceive in the language of Section 8 (d) or in the legislative history any indication that Congress intended to remove agreements not to strike from the practices and procedures of collective bargaining and to write a no-strike clause into every collective bargaining contract. I would, moreover, be very hesitant to make such an inference of Congressional intent in the face of the admonition contained in Section 13 of the Act, which states: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." (Emphasis supplied.)

That Congress did not intend to enact compulsory no-strike clauses into contracts is also evident from another section of the Senate Report. In Senate Report No. 105 on S. 1126, on pages 16 and 17, the Senate Committee discussed Title III of the amendment which relates to suits by and against labor organizations

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for breach of collective bargaining agreements. The Committee viewed the provisions of Section 301 as insuring the stability to be desired in collective bargaining relations. The Committee, however, made it apparent that it did not intend to write no-strike clauses into collective bargaining agreements by the enactment of Section 8 (d), for on page 17 immediately following the paragraph quoted in footnote 3 of the three-Member opinion the Report stated:

> It has been argued that the result of making collective agreements enforceable against unions would be that they would no longer consent to the inclusion of a no-strike clause in a contract. This argument is not supported by the record in the few States which enacted their own laws in an effort to secure some measure of union responsibility for breaches of contract. Four States—Minnesota, Colorado, Wisconsin, and California—have thus far enacted such laws and,

so far as can be learned, no-strike clauses have been continued about as before.

> In any event, it is certainly a point to be bargained over and any union with the status of "representative" under the NLRA which has bargained in good faith with an employer should have no reluctance in including a no-strike clause if it intends to live up to the terms of the contract. The improvement that would result in the stability of industrial relations is, of course, obvious. (Emphasis supplied.)

If Congress had intended to prohibit strikes at any time during the term of a contract, would it have been concerned with the argument that Title III, Section 301, (that labor unions may sue and be sued in the Federal courts) would discourage unions from agreeing to the inclusion of no-strike clauses in contracts? If it had been intended to remove no-strike provisions from the realm of collective bargaining, would the Report have then stated that the inclusion of no-strike clauses in contracts "is certainly a point to be bargained over?" Would it have made the declaration of opinion that a union which intends to live up to its contract ought not to be reluctant to agree to a no-strike clause? I think not.

The Chairman and Members Rodgers and Beeson refer to the interpretation given to Section 8 (d) by the Court of Appeals for the Eighth Circuit in Local No. 3, United Packinghouse Workers of America, CIO v. National Labor Relations Board. In my opinion the Court rejected the construction placed upon Section 8 (d) by the Chairman and Members Rodgers and Beeson; the Court also refused to accept the interpretation of Member Peterson. Both viewpoints were

presented to the Court. Under these circumstances and with due respect to the Court of Appeals for the Eighth Circuit, I am constrained to adhere to the views expressed in my opinion until the Supreme Court of the United States has had an opportunity to pass on the question.

The Chairman and Members Rodgers and Beeson state that their interpretation does not have the effect of writing a no-strike clause into every contract — only into some agreements. It is apparent that this statement significantly limits the broad, general, and sweeping language and rationale which appear before that statement in their opinion. As I have explained earlier, however, the language of Section 8 (d) contemplates one 60-day period within which employees who engage in a strike shall lose their status as employees.

The three-member opinion further states that their interpretation of Section 8 (d) "preserves the right to strike in all circumstances where the parties have provided in their agreement for negotiating substantial changes in its provisions . . ." This in its context is tantamount to saying that Section 8 (d) wrote a no-strike clause in every collective bargaining contract for the period of its duration but that the parties by agreement to a reopening clause can nullify or abrogate the statutory provision as the three Members construe it. This in itself as a principle is very questionable, but more than that, I find it extremely difficult to reconcile this position with that taken by the same Board Members in General Electric Company, 108 NLRB No. 183, where the majority set aside a contract as a bar to a representation petition because of the nature of its reopening provisions. As I view it, the three Members are stating in the present case that they are protecting the right to strike during the term of a contract if the parties have provided for reopening to negotiate substantial changes. With equal force, however, in the General Electric case the majority has declared that if the parties do exercise the right to agree on such provisions, under the circumstances of that case, stability does not exist and the union is immediately vulnerable to a rival petition. Not contributing to an understanding of what the majority is preserving is the majority opinion in American Lawn Mower Co., 108 NLRB No. 215, (cited by the three Members in footnote 9) in which the modification and termination clauses of a contract were

co-terminous and where the majority, holding that a notice to modify actually terminated the contract, stated, "It would seem incongruous to hold that there is a valid contract binding upon the parties at the very time that the Union strikes to obtain an effective agreement with the Employer." I fail to discern the filament of logic or consistency which would make these various statements and decisions coherent.

As I analyze their opinion, the Chairman and Members Rodgers and Beeson further limit the general basis of their argument by stating that the opinion expressed by them "has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination." By this, I take it, they agree with the decision in Mastro Plastics Corp., 103 NLRB 511, where former Chairman Herzog and I dissented in part. As we stated: "The language used in Section 8 (d) does not distinguish as to what types of strikes or lockouts are prohibited during the 60-day period." Our reasons for disagreeing with the majority on this point are fully expressed in our opinion in that case and will not be repeated here.

In summary, as to the interpretation of Section 8 (d), I am convinced by the language of that section that the proviso applies only when parties to a fixed-term contract seek to terminate or modify it upon its expiration or when they seek to terminate or modify a contract of indefinite duration or one terminable at will. I further think that this view is a reasonable one, consistent with the intent of Congress as revealed in the legislative history.

Having reached this conclusion as to the meaning of Section 8 (d) there remains the effective application of this section to the facts in the present case. As I interpret the duration provisions of the contract between the Respondent and the Union, the contract was to be in effect until October 23, 1951, and thereafter was to continue as a contract terminable at will upon the giving of notice in accordance with specified procedure. After October 23, 1951, therefore, the contract was in existence without a definite

termination date, but could be brought to expiration simply and reasonably by compliance with its clear terms at the will of either party. Under my view of the Statute, Section 8 (d) was applicable whenever one of the parties desired to terminate this latter contract. The Union

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was therefore obligated at such time to comply with the procedures set forth in that section. Such procedures required the Union here, where the contract contained no expiration date, to serve written notice upon the Respondent of its proposed termination or modification of that contract 60 days prior to the time it proposed to make such termination or modification and to refrain from striking during those 60 days. This the Union failed to do when it went on strike in April 1952 to compel immediate modification or termination of the existing contract by agreement on the Union's proposals. The earlier notice it gave on August 24, 1951, did not meet the 8 (d) requirements. That notice was of a desire to amend the initial contract for the purpose of complying with the provisions of the contract on amendments; it was given before the contract terminable at will came into being and hence was given before the period when the proviso to Section 8 (d) applied. As the Union failed to give notice to the Respondent and the Conciliation Service and any state mediation agency as required by Section 8 (d), and the employees, nevertheless, struck, the strikers lost their status as employees of the Respondent and were not entitled to reinstatement at any time after they struck on April 30, 1952.

The Chairman and Members Rodgers and Beeson have decided that the "expiration date" or "modification date" of the contract was October 23, 1951, and conclude that the notices given on August 24, 1951, met the requirements of Section 8 (d). According to them, "If Section 8 (d) is considered in the framework of industrial reality and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of a contract, it be-

comes clear that Congress used the term 'expiration date' to signify the date in the course of a labor contract when the contract by its own terms is subject to either modification or termination . . ." That Congress was aware of, and took into consideration, the fact that many contracts contain a 60-day automatic renewal provision effective 60 days before the termination date of a contract is apparent from the reference made to those provisions on page 25 of the Senate Report which is quoted and discussed earlier in this opinion. I do not know, however, what "framework of industrial reality" dictates that the Chairman and Members Rodgers

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and Beeson then find that "expiration date" means something esoteric, something quite unlike the meaning ordinarily applied in the law of contracts. I suggest that the problem of expiration date, which to me means "termination date," created by the Chairman and Members Rodgers and Beeson would quickly dissolve if they were willing to read, and to give effect to, the simple and cogent language of the contract itself. Under those provisions the notice given on August 24, 1951, did not terminate the contract, and, when October 23, 1951, arrived, the contract did not expire, but under its terms was converted into a contract terminable at will upon the giving of the 60-day notice to terminate required by its terms. It is my opinion that, except when it would be contrary to law, the terms of a contract freely arrived at after collective bargaining should be given the clear meaning intended by the contracting parties.

In view of the Union's failure to comply with Section 8 (d) of the Act and the Respondent's genuine attempts to reach a collective bargaining agreement from August 29, 1951, to August 3, 1952, when a new contract was executed, I would not find violations of Section 8 (a) (5) in the isolated incidents alleged as such violations.

As I would find neither a violation of Section (a) (3) nor Section 8 (a) (5), I would dismiss the complaint in this case.

Dated, Washington, D. C. Aug 5 1954

Abe Murdock, Member

National Labor Relations Board

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APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OIL WORKERS INTERNATIONAL UNION, CIO, or in any other labor organization of our employees, by discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL MAKE whole the employees who went on strike on April 30, 1952, for any loss of pay suffered as a result of the discrimination against them between June 21, 1952, and August 3, 1952.

WE WILL NOT engage in any acts, in any manner interfering with the efforts of OIL WORKERS

INTERNATIONAL UNION, CIO, to negotiate for, or represent, the employees in the bargaining unit consisting of:

All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at our Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors as defined in the Act.

Lion Oil Company
(Employer)

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. _____

LION OIL COMPANY PETITIONER

VS.

NATIONAL LABOR RELATIONS BOARD
RESPONDENT

Petition for Review of, and to Set Aside, an Order of National Labor Relations Board.

Comes Lion Oil Company (hereinafter referred to as "Petitioner"), by its attorneys, and petitions this Honorable Court to review and set aside an order, dated August 5, 1954, of Respondent, National Labor Relations Board

(hereinafter referred to as the "Board"), by which the Petitioner is aggrieved and its interests are adversely affected, and respectfully shows to the Court:

I.

On August 5, 1954, the Board entered an order (109 NLRB No. 106) requiring the Petitioner to make whole with respect to loss of earnings during the period between June 21, 1952, and August 4, 1952, 546 employees of the Petitioner, who went on strike on April 30, 1952, to enforce a demand for additional economic benefits, who offered, on June 21, 1952, to return to work at the plant at which they were employed at the time the strike began and who were refused employment by the Petitioner until August 4, 1952, the date upon which the dispute was settled and upon which each striking employee returned to work. The Petitioner was further ordered to cease and desist in discouraging membership in Oil Workers International Union, C. I. O., the union which represented the employees at the time the strike began, or any other labor organization, by acts specified in the order, to cease and desist refusing to bargain collectively with that union as the exclusive representative of the employees who were involved in the strike, or in any other manner interfering, restraining or coercing its employees in the exercise of the right of self-organization. The Petitioner was ordered to post a specified notice in the plant involved and to notify the Regional Director the steps taken to comply with the order. The order was entered after the filing with the Board, on August 11, 1952, of a complaint against the Petitioner, the Petitioner's answer thereto, a hearing before a Trial Examiner of the Board beginning August 26, 1952, an order of the Board, on January 30, 1953, transferring the case to the Board, the issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order issued, on July 30, 1953, by a panel of the Board, and the Petitioner's exceptions thereto, in Board Case No. 15-CA-488.

II.

The Petitioner has, since 1946, continuously maintained its principal operating office at El Dorado, Arkansas, and has continuously operated, since that year, near that city and in Union County, Arkansas, a plant for the manufacture of anhydrous ammonia and derivatives thereof. Each unfair labor practice here in question, each of which arose out of the strike mentioned, was alleged to have been engaged in by the Petitioner in Union County, Arkansas.

III.

The Petitioner seeks relief upon the grounds that the strike here involved was unlawful in that it was called while a contract between the Petitioner and Oil Workers International Union, C. I. O., as the representative of the striking employees, was in full force and effect; that each of the 546 employees, required, by the order of the Board here involved, to be made whole with respect to loss of pay, went out on strike before the expiration date of the collective bargaining contract between the Petitioner and the union representing them, and that the calling of the strike by the union and the participation in it by each employee here involved was in violation of Section 8 (d) of the Labor Management Relations Act of 1947. Therefore, no one of the employees here involved was entitled to re-employment as a matter of right, and the Board had no right or jurisdiction to order the Petitioner to make any one of those employees whole with respect to loss of pay suffered by him during the period between June 21, 1952, and August 3, 1952, nor to enter any other part of its order against the Petitioner in this case.

IV.

WHEREFORE, your Petitioner prays

(1) That a copy hereof be forthwith served upon the Board.

(2) That that Board be required to certify to this Court a transcript of the record of proceedings wherein

the order against the Petitioner hereinbefore mentioned was entered, including the entire record before the Board in this case, together with the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order of the Board, Petitioner's exceptions thereto, and the order of the Board in this case.

(3) That said proceedings, findings, conclusions, and order be reviewed by this Court.

(4) That said order be set aside and this cause be remanded to the Board with directions to dismiss these proceedings against the Petitioner, and

(5) That this Honorable Court grant to the Petitioner such other and further relief as the rights and equities of the parties may require.

Jeff. Davis
B. L. Allen
H. S. Dickens
Attorneys for Lion Oil Company, Petitioner.
The address of each is
519 Lion Oil Building
El Dorado, Arkansas

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

LION OIL COMPANY, PETITIONER

V.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

Answer of the National Labor Relations Board to Petition to Review and Set Aside Its Order, and Request for Enforcement of Its Order.

To the Honorable, the Judges of the United States Court of Appeals for the Eighth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 141 et seq.), herein called the Act, files this answer to the petition to review and set aside an order of the Board, and its request for enforcement of the Board's order.

1. Answering the allegations in paragraph I of the petition for review, the Board prays reference to the certified copy of the entire record of the proceedings be-

fore the Board, filed herein, for a full and exact statement of the pleadings, evidence, exhibits, rulings, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter before the Board.

2. The Board admits the allegations in paragraph II of the petition for review.

3. The Board denies each and every allegation of error contained in paragraph III of the petition for review, and avers that its order is proper in all respects.

Wherefore, the Board respectfully prays this Honorable Court that said petition, insofar as it prays that the Board's order be set aside, be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of the order, issued by the Board on August 5, 1954, in the proceedings before it, entitled "Lion Oil Company and Oil Workers International Union, CIO," being Case No. 15-CA-488 on the docket of the Board. In support of this request, the Board respectfully shows:

(a) Petitioner, a Delaware corporation, does business in the State of Arkansas, and the unfair labor practices found by the Board to have been committed by it also occurred in the State of Arkansas, within this judicial circuit. This Court has jurisdiction of the petition herein and of this request for enforcement by virtue of Sections 10 (e) and (f) of the Act.

(b) Upon proceedings in the said case before the Board, including complaint, answer, hearing to receive evidence, proposed findings of fact and conclusions of law, exceptions thereto, all of which is more fully shown by the certified record filed herewith, the Board on August 5, 1954, duly stated its findings of fact and conclusions of law, and issued an order directed to Petitioner, its agents, successor, and assigns.

So much of the aforesaid order as relates to this proceeding provides as follows:

"Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the

complaint herein for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section entitled "The Remedy" in the attached Proposed Findings;

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith."

(c) On August 5, 1954, the Decision and Order was served by sending a copy thereof, post paid, bearing a Government frank by registered mail, to Petitioner's counsel, Jeff Davis, Esq., Lion Oil Building, El Dorado, Arkansas.

(d) Pursuant to Sections 10 (e) and (f) of the Act, the Board is certifying and herewith filing a transcript of the entire proceedings before the Board, including the pleadings, evidence, findings of fact, conclusions of law and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of filing of this answer and request for enforcement and of the certified record, to be served upon Petitioner, and that this Court take jurisdiction of the proceedings and of the question determined therein and

make and enter upon the pleadings, evidence, and proceedings set forth in said record, and upon so much of the order made therein, as is set forth hereinabove, a decree denying the petition to set aside and enforcing the order of the Board.

/s/ David P. Findling
David P. Findling
Associate General Counsel
National Labor Relations Board

Dated at Washington, D. C. this 30th day of September 1954.

249 United States Court of Appeals for the Eighth Circuit

No. 15158

LION OIL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Opinion

April 22, 1955

Jeff Davis (B. L. Allen and H. D. Dickens were with him on the brief), for Petitioner.

Duane Beeson (George J. Bott, David P. Findling, Marcel Mallet-Prevost and Frederick U. Reel were with him on the brief), for Respondent.

Lindsay P. Walden and William E. Rentfro filed brief for Oil Workers International Union, CIO, as Amicus Curiae.

Before SANBORN, JOHNSEN *and* VOGEL, Circuit Judges

250 VOGEL, Circuit Judge.

This case is before the court upon the petition of Lion Oil Company to review and set aside an order of the National Labor Relations Board, and upon request of the Board for enforcement of its order issued against the Lion Oil Company on August 5, 1954, following proceedings under Section 10 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, et seq.).

The petitioner, Lion Oil Company (hereinafter referred to as "Company") and Oil Workers International Union CIO (hereinafter referred to as "Union") entered into a collective bargaining contract providing in detail the wages, hours and conditions under which employees should work for the Company during the term of the agreement. Insofar as it is applicable to the problem presented herein, the agreement between the Company and the Union provided as follows:

"ARTICLE I

TERM OF AGREEMENT

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

251 (b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, the Union transmitted by mail to the Company and to the Federal Mediation and Conciliation Service the following letter:

"OIL WORKERS INTERNATIONAL UNION, C. I. O.

EL DORADO LOCAL NO. 434

El Dorado, Arkansas

AUGUST 24, 1951.

Registered mail. Return receipt requested. Special delivery.

LION OIL COMPANY,

Lion Oil Building, El Dorado, Arkansas.

Attention: Mr. T. M. Martin, President.

FEDERAL MEDIATION AND CONCILIATION SERVICE,

14th and Constitution Avenue NW., Washington 25, D. C.

GENTLEMEN: Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bargaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

252 Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

OIL WORKERS INTERNATIONAL UNION, C. I. O.,
By (S) E. P. SHELTON,
Chairman Workmen's Committee,
Lion Oil Group Local 434—OWIU-CIO."

Representatives of the Company and the Union first met on August 29, 1951, to discuss the proposed amendments. Between that date and April 30, 1952, there were 37 meetings held for the same purpose. No agreement was arrived at.

On April 30, 1952, the employees of the Company went on strike for a wage increase and other benefits.

Neither the Company nor the Union notified the other that it intended to *terminate* the contract. On June 21, 1952, after the employees here involved had been on strike continuously from April 30, 1952, the Union offered to return all striking employees to work unconditionally. The Company refused such offer. Subsequently it distributed to all employees copies of a letter to the Union in which it defended its position that there would be no reinstatement of the strikers "until such time as the (employees) are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period."

253 Subsequent to June 21st numbers of employees, singly and in groups, appeared at the Company's plant, were interviewed by the plant superintendent and rehired upon the assurance of each individual that he would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and that he would not honor any picket line at the Company's plant. It was made clear that without such assurances no striker would be permitted reinstatement. Between June 21, 1952, and August 3, 1952, 27 negotiation meetings between representatives of the Company and the Union were held in an effort to settle the dispute.

On August 3, 1952, a new agreement was formally executed with the employees being reinstated the following day.

During the period of negotiations the Union filed with the National Labor Relations Board a charge of unfair labor practices against the Company. The charge was based upon the activities of the Company subsequent to the Union's offer to return the strikers to work.

The Company filed an answer to the charge in which it denied the allegations of unfair labor practices and, further, set up as a separate defense the claim that the strike was an unlawful one because it was called by the Union at a time when there was in effect between the Union and the Company a collective bargaining contract; that the strike was in violation of the contract provisions, constituted an unfair labor practice and that the employees participating therein thereby lost their status as employees and were not entitled to relief.

By a split decision (one member dissenting and one con-
254 curring specially) the Board held that the Company was guilty of unfair labor practices within the meaning of Sections 8 (a) (1), 8 (a) (3) and 8 (a) (5) of the National Labor Relations Act and rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract as in effect. It is this decision and the resulting order that are under review here.

The primary question is this: Was the strike of April 30, 1952 in violation of the agreement between the parties and contrary to the provisions of Section 8 (d) of the Act? The relevant portions of that Section are as follows:

"* * * where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * * * * *

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

* * * Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an

employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended * * *."

255 In its decision the Board held, in effect, that while the contract was in force at the time of the strike, it was not a contract of fixed duration and that the notice of August 24, 1951 with reference to modification satisfied the provision of Section 8 (d) and that accordingly the strike was not unlawful. The majority opinion stated:

"It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which as indicated above, we consider tantamount to 'expiration' as that term is used in Section 8 (d) (4)) coincided. Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act."

We cannot agree with such interpretation of the Act nor with the majority's apparent disregard of the plain provisions of the contract between the parties. The contract, in the first paragraph, provides that it shall remain in effect for a fixed period; that is, October 23, 1950 to October 23, 1951, "*and thereafter until canceled in the manner herein in this Article provided*". [Emphasis supplied.] After October 23, 1951, the contract became an indefinite one as to time but terminable at the will of either party upon complying with the specific provisions therein set forth.

The provisions with reference to *amendment* and *termination* are separately stated and are clear and unambiguous. If either party to the agreement desired to *amend* the terms thereof it would have to notify the other in writing of such desire. No such

256 notice could be given prior to August 24, 1951. During the period of 60 days immediately following the date of the receipt of such notice, the Company and the Union were to attempt to agree as to amendments proposed. If an agreement with respect to the proposed amendments was not reached within the 60-day period following the notice, then "* * * either party may terminate this agreement *thereafter* upon not less than 60 days' written notice to the other". [Emphasis supplied.] The wording and the intent of the contract are clear. The word "thereafter" can only refer to a time *after* attempts to negotiate amendments had failed for a period of not less than 60 days. Then, and only then, could either party terminate the contract and then only by

resorting to the provisions with reference to notice and a waiting period of 60 days.

We note that the Supreme Court of Arkansas, in referring to the same striking employees and the same contract here involved, said in Lion Oil Co. v. Marsh, 249 S. W. 2d 569, 571:

"Agreement in Force.—It can hardly be disputed that the agreement referred to above was in full force when the strike and picketing occurred, as a casual reading of Article I set out above will show. Appellees (union member employees) could have easily effected a legal cancellation of the contract by giving the notice provided for therein, but the record does not show this notice was given. Since the terms of the agreement provided for an automatic continuation after October 23rd, 1951 the burden was on appellees to show they had terminated the agreement by giving the required notice, but this burden has not been met. * * *"

We thus had in existence on April 30, 1952 a colelctive bargaining contract, binding upon the Company and the Union, indefinite as to time but terminable by either party upon 60 days'
257 notice. The Board would disregard the separate provisions in the contract with reference to *termination* as distinguished from *amendment*. In interpretation, contracts, whether labor or otherwise, are entitled to their plain, ordinary meaning. The intent of the parties to the contract appears obvious—a fixed status quo for a period of one year; the possibility of bilateral action to amend after the expiration of the first ten months, and, thereafter, a period of 60 days for negotiation; and the possibility of unilateral termination by either party after the expiration of the one year and upon the giving of 60 days' notice thereafter. They would not have had to so contract. The point is that they did and the contract is binding upon both and continues after the fixed period of one year for an indefinite time unless terminated by either party thereafter in accordance with the provisions relating to *termination*.

There being in existence at the time of the strike a collective bargaining agreement between the Company and the Union, the situation is not too dissimilar to that presented in Local No. 3, United Packinghouse Workers of America, CIO v. National Labor Relations Board, et al., 210 F. 2d 325, in which this court said at pages 332 and 333:

"The strike was not called until after sixty days after the giving of the required notice. However, the expiration date of the collective bargaining contract between the company and the union expired later and hence it is argued that no strike could properly be called until after the expiration date of the contract. The Board strenuously argues that so construing the statute would to a considerable extent be destructive of its purpose. It is urged

that so construed there could be no strike during the life of the contract between the employer and the union. That argument we think a very proper one to be addressed to the Congress and apparently it was urged upon Congress.

* * * * *

258 We are of the view that by going out on strike before the expiration date of the collective bargaining contract the employees lost their status as employees of the company and hence they were not entitled to re-employment as a matter of right."

We have here in the instant case a situation where the Union and the Company sought industrial peace through a collective bargaining agreement providing for a period of negotiation after notice of a desire to *amend* and a waiting period after notice of *termination* which could only follow failure to agree. The Board's decision would read out or ignore that part of the agreement dealing with notice of *termination* and the 60 days' waiting period to follow. That may not be done. The parties had a right to contract as they did and the plain provisions of their mutual agreement should be enforced.

At the time of the strike in question there existed a binding contract between the Union and the Company. It had not been terminated in accordance with its provisions. The strike was accordingly in violation of Section 8 (d) and the strikers lost their status as employees of the Company and are not entitled to the relief provided in the Board's order.

The request of the Board for enforcement of its order is denied, and the order is set aside.

259 United States Court of Appeals for the Eighth Circuit

No. 15158. September Term, 1954

LION OIL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Decree

April 22, 1955

This matter came on to be heard on the petition of the Lion Oil Company to review and set aside the Order of the National

Labor Relations Board issued August 5, 1954, and on the response of said Labor Board requesting entry of a Decree denying the petition and enforcing its Order, and was argued by counsel.

On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the Petition to set aside the Order of the National Labor Relations Board in this matter be, and it is hereby, granted, and the Order is set aside. The request of said Board for enforcement of its Order is hereby denied.

APRIL 22, 1955.

260 [Clerk's certificate to foregoing transcript omitted in printing.]

261 Supreme Court of the United States

Order allowing certiorari

Filed March 12, 1956

[Title omitted.]

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1956